

GENERAL PROVISIONS

ARTICLE 1 -- GENERAL

1.01 DEFINITIONS

A. Wherever a word or phrase defined below, or a pronoun used in place thereof, is used in the Contract Documents, it shall have the meaning set forth in this Section 1.01. References to related Sections or Documents are provided for convenience but not to exclude other Section or Documents where such terms may be used. The colon (":") is employed in this Section as a symbol for "shall mean". A colon also may be employed in these General Provisions or elsewhere in the Contract Documents to set off a section title or heading from the text that follows or as a punctuation mark in a sentence to direct attention to the matter that follows. Where additional definitions are provided in Sections of the Technical Specifications, to the extent there is any conflict between those definitions of terms and the defined terms set out in this Section 1.01, the definitions provided in the Technical Specifications shall govern, but only as to that Section of the Technical Specifications.

1. Accepted, Approved: Accepted or approved, or satisfactory for Work (or an identified portion thereof), as determined in writing by the City by a person authorized to make such determination. Where used in conjunction with the City's response to submittals, requests, applications, inquiries, proposals and reports by Contractor, the term "approved" shall be held to limitations of the City's responsibilities and duties as specified in these General Provisions. In no case shall the City's approval be interpreted as a release of Contractor from its responsibilities to fulfill the requirements of the Contract Documents or a waiver of the City's rights under the Contract.
2. Act of God: Flood, windstorm, tornado, earthquake in excess of a magnitude 3.5 on the Richter Scale, tidal wave, or other natural disaster.
3. Addenda: Written or graphic instruments issued prior to the opening of Bids which make changes, additions or deletions to the Bid Documents.
4. Additional Work: Work that the City directs Contractor to perform that is not within the original (advertised) scope of Work described in the Contract Documents and is not Incidental Work.
5. Agreement: The contract between the City and Contractor as memorialized in the Contract Documents, describing the Work to be performed, the furnishing of labor, Materials and equipment to perform the Work, insurance, bonds, the terms and conditions of performance, and consideration, and any properly executed and certified Change Order.
6. Alternate Bid Item (Option): A Item listed in the Bid Documents that may be added to or deducted from the Bid Price to meet the Project construction budget or other Agency requirements. An Option that the City may add to the Work is an Additive Option; an Option that the City may delete from the Work is a Deductive Option.
7. Application for Progress Payment (Application for Payment): Written request submitted by Contractor to City for payment of Work completed in accordance with the Contract Documents and approved Schedule of Values. Refer to Article 9, Payments and Completion.
8. Approved Equal: Approved in writing by the City as being of equivalent quality, utility and appearance. Equivalent means equality in the opinion of the Engineer. The burden of proof of equality is the responsibility of

Contractor. Refer to Technical Specifications (Division 1) for procedures for proposing substitutions.

- 9. Article: A numbered, titled provision of this General Provision document that includes one or more paragraphs or Sections.
- 10. Avoidable Delay: Refer to definition in Section 7.02.J.
- 11. Award: Resolution by the SFMTA Board of Directors approving award of the Contract to Contractor and authorizing the Department Head to execute said Contract, subject to the any other required approvals and the Controller's certification of funds.
- 12. Base Work: Work that is not included under an Alternate Bid Item (aka Option).
- 13. Baseline Schedule: The schedule for the performance of the Work established immediately following NTP. Refer to Technical Specifications, Division 1.
- 14. Beneficial Use (also referenced as Owner's Beneficial Use or Beneficial Occupancy or Partial Utilization): Refer to Section 2.08.
- 15. Bid: Refer to "Proposal".
- 16. Bidder: An individual or entity submitting a Proposal to perform the Work under the Contract. (Where a requirement of submission of a Proposal references "Contractor," such section shall be understood to mean "Bidder.")
- 17. Bid Bond: The security submitted by a Bidder with its Proposal to guarantee its acceptance of offer of the Contract if awarded to it, which security shall be a corporate surety bond in the form required by the City or a certified check drawn on a solvent bank of the State of California, payable on sight to the City and County of San Francisco, the amount of which shall not be less than ten percent of the total amount bid for the proposed Work.
- 18. Bid Date: The date the City specifies in procurement documents that is the due date and time by which a Proposer must submit its Proposal.
- 19. Bid Days: Where specified to be used as an element of a Bid selection, Bid Days are the number of calendar days stated in Contractor's Bid (Proposal) in which Contractor proposes and agrees under the Contract to complete all Work in accordance with the Contract Documents.
- 20. Bid Documents: The forms and documents issued to a Proposer and the completed forms and other documents required to be submitted with a Proposal.
- 21. Bid Price: The value stated in dollars that Contractor has proposed in its Bid, which shall be full compensation and consideration for Contractor's performance of all Work in accordance with the Contract Documents.
- 22. Blue Book: The most recent edition of the document issued by the SFMTA titled "Regulations for Working in Public Streets," in which requirements for working in or over streets in San Francisco are described and referenced.

23. By Others: Activities and work related to the Project that is outside the scope of Work to be performed by Contractor, but that will be performed by the City, other contractors, or by other means and at other expense.
24. Change Order (Contract Modification): A written instrument prepared by the City and executed in writing by the City and Contractor after the Effective Date of the Agreement, stating their agreement upon all of the following: (1) a change in the Work to be performed; (2) the amount of the adjustment in the Contract Sum, if any; (3) the extent of the adjustment in the Contract Time, if any; and (4) an amendment to any other Contract term or condition. Refer to Article 6 Clarifications and Changes in the Work.
25. Change Order Request (COR): A request prepared by Contractor for additional compensation or time Contractor deems necessary, which shall include a written narrative stating the amounts and reasons for such additional compensation or time, and complete documentation supporting the request. Refer to Section 6.02.
26. City: The City and County of San Francisco, California, identified as such in the Agreement and referred to throughout the Contract Documents as if singular in number. Except as to any reference to a City department or agency that acts in a regulatory capacity, the terms City, SFMTA, Agency and Owner are synonymous for purposes of this Contract. In reference to this Contract, the City is a contracting party by and through the SFMTA.
27. City Representative: Refer to "Engineer."
28. Claim; Contract Claim: A written demand by Contractor for an adjustment in the Contract Sum or Contract Time, or both, which is submitted in accordance with the requirements of the Contract Documents. Refer to Section 13.04 (Contract Claims). A "Claim" or "Contract Claim" under this definition does not include a California Government Code Claim.
29. Clarification: A document consisting of supplementary details, instructions or information issued by the City which clarifies or supplements the Contract Documents. Clarifications do not constitute a change in Contract Work, Contract Sum or an extension of Contract Time unless requested by Contractor and approved by the City in accordance with the Contract Documents. Refer to Article 6, Clarifications and Changes in the Work.
30. Code: The latest (most recently enacted) versions of State, federal and local regulations, ordinances, statutes and other laws and requirements of regulatory agencies with jurisdiction over the Project that govern the design, means and methods of construction, labor employed on the Work, the built structure, and safety and other mandates of law. Wherever reference is made to Code, that reference shall be construed to mean the applicable codes, regulations, ordinances, statutes, laws and other legal requirements applicable to the Work, whether or not specified or otherwise referenced in the Contract Documents.
31. Construction Area: Any area surrounding or adjacent to the Site that is impacted by Contractor's performance of the Work, including but not limited to streets, sidewalks, and private and public property.
32. Contract: Refer to "Agreement."
33. Contract Amount: Refer to "Contract Sum."

34. Contract Documents: The documents listed in Section 1.04A that read together memorialize the City's agreement with Contractor to perform the Work for the Contract Sum and within the Contract Time stated therein
35. Contract Modification: Refer to "Change Order."
36. Contract Sum: The dollar sum (or the corrected dollar sum if errors are found) stated in Contractor's Bid for which it will perform the Work as described in the Contract Documents (including exercised Options), which amount shall compensate Contractor for costs, as that amount may be amended by a properly executed Change Order.
37. Contract Time: The number of Days as stated in the Special Provisions, within which Contractor shall complete the Work or a specified portion of the Work. (The term "time" is synonymous to the Contract Time, when "time" is used to reference to a period in which Contractor shall perform Work or a specific portion of the Work.) See Section 1.03.G.
38. Contractor: The Bidder (person or entity) with whom the City has executed the Contract and who is identified as such therein and referred to throughout the Contract Documents as if singular in number and neuter in gender. The term "Contractor" includes Contractor's authorized representative(s).
39. Contractor-Caused Delay: Any interruption in the Work that could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of Contractor, or its Subcontractors or Suppliers of any tier.
40. Contractor's Employees: Any person engaged in the execution of Work under this Contract as direct employees of Contractor, as Subcontractors, as suppliers or as employees of Subcontractors or suppliers.
41. Critical Path: A continuous chain of activities with zero float running from the date the Work is to be commenced (stated in the first NTP issued to Contractor) to the date stated in the Project Schedule by which Contractor shall have reached Substantial Completion of the Work.
42. Critical Path Method (CPM): Refers to the critical path method scheduling technique.
43. Day: A calendar day of 24 hours, unless otherwise specified, irrespective of whether the term is capitalized.
44. Days: Consecutive calendar days. (The term "days" when not capitalized shall mean Days except where expressly stated otherwise, as in "Working Days.")
45. Default: Failure by Contractor to meet a requirement of the Contract that if not timely cured would constitute breach of contract. Refer to Section 14.01.
46. Department of Parking and Traffic (DPT): The former name of the Sustainable Streets Division of the SFMTA, the division of the SFMTA in charge of parking regulation and control, and traffic engineering.
47. Department Head: The Director of Transportation (chief executive officer) of the San Francisco Municipal Transportation Agency, acting directly or through properly authorized representatives, agents, and consultants, limited by the particular duties entrusted to them.

48. Differing Condition (or Differing Site Condition): A condition of the Site that is impacts the Work or the Project Schedule and is not described in the Contract Documents or Reference Documents and could not be inferred from diligent review of those documents, could not be discovered by diligent inspection of the Site, or would not reasonably be known or apparent to an experienced contractor. Refer to Section 3.04.
49. Direct Costs: Provable, allowable costs to Contractor for labor and materials incurred in the performance of Additional Work as described in Section 6.04.
50. Division: A grouping of Sections of the Technical Specifications describing related construction products and activities. Refer to Table of Contents for a listing of Division and Section numbers and titles.
51. Drawings: The official graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, Sections, details, schedules and diagrams pertaining to the Work provided for in the Contract or any construction connected therewith.
52. Early Completion: Substantial Completion or Final Completion of the Work prior to the expiration of the Contract Time provided for such completion of Work in the Contract Documents. Refer to Subsections 3.11.H and 3.11.I.
53. Effective Date of the Agreement: The date indicated in the Agreement on which it was executed, but if no such date is indicated it shall mean the date on which the Agreement is signed by the last of the two parties to sign, or the date specified in the notice issued by SFMTA to Contractor that the Controller of the City and County of San Francisco certifies the availability of funds, whichever is later.
54. Engineer: A contract manager or Site representative of the San Francisco Municipal Transportation Agency properly authorized by the SFMTA with regards to this Contract. The Engineer will manage this Contract for the SFMTA and be the main point of contact with Contractor for the performance of inspections and administration of the Contract. The Engineer is referenced in some Contract Documents as the "City Representative".
55. Evaluated Bid Price: Where Bid Days are included as criteria for evaluation of Proposals, the Evaluated Bid Price is the combination of Bid Price and Bid Days submitted by Contractor that is the basis for the SFMTA's award of the Contract to Contractor.
56. Final Acceptance: The date of written acceptance of the Work by the Department Head, issued in accordance with Section 6.22(K) of the San Francisco Administrative Code, when all Work has been completed in accordance with the Contract Documents, including all Items on Punch Lists, and when all contractual and administrative requirements have been fulfilled.
57. Final Completion: The completion by Contractor of all Work, including Punch List Work.
58. Force Account Work: Change Order Work that the City directs Contractor to perform, and which shall be paid for on the basis of Direct Costs plus

Mark-up on Direct Costs for overhead and profit, as provided in Section 6.05.

- 59. Furnish: Purchase and deliver to the Site, including proper storage only; no installation is included. The term "Furnish" also means to Supply and Deliver to the Site.
- 60. General Equipment: The equipment and tools necessary to perform the Work as listed in the "Labor Surcharge & Equipment Rental Rate Book" published by the California Department of Transportation (available at <http://www.dot.ca.gov/hq/construc/equipment.html>) and in the "Rental Rate Blue Book," published by Machinery Information Division of PRIMEDIA Information, Inc., 1735 Technology Drive Suite 410, San Jose, California 95110-1313. The term "equipment," irrespective of capitalization, when used in reference to tools or equipment used by Contractor in performance of the Work but not incorporated into the Work shall be synonymous with General Equipment.
- 61. General Provisions: This document, also occasionally referenced in Contract Documents as "General Conditions."
- 62. Holiday Moratorium: The period from the Thanksgiving Day to January 1, inclusive in which Contractor is prohibited from performing Work in the public right of way in designated areas of San Francisco. Refer to the Blue Book.
- 63. Incidental Work: Work that may not be specifically called out in the Contract Documents, but which in the ordinary and custom of trade and construction is necessarily connected to, must be performed as part of the Work, or is a prerequisite to the performing the Work that is identified in the Contract Documents. The compensation for Incidental Work is included in the Contract Sum and no additional compensation shall be paid for its performance.
- 64. Indemnitee: A person or entity to whom Contractor owes defense and indemnity obligations (also variously identified as "indemnified party") as described in Section 3.24, Article 10, and the sections of the Special Provisions concerning insurance, or other part of this Agreement that specify persons to be indemnified by Contractor.
- 65. Install: Apply, connect, erect or otherwise incorporate an Item into the Work; Furnishing or Supplying is not included as part of "Install." The term "Install" also describes operations at the Site, including unpacking, assembly, erection, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations.
- 66. Item: A separate, distinct portion of the whole Work, which may comprise Material(s), Equipment, Article(s), or process(es).
- 67. Key Personnel: Employees of Contractor or Subcontractors essential to Contractor's performance of the Work who Contractor identifies as assigned to perform the Work exclusively and authorized to represent Contractor. Refer to Section 3.05.C.
- 68. Lower-Tier Subcontractor or Supplier: A person or entity who has a direct contract with a Subcontractor or Supplier, or with another Lower-Tier Subcontractor or Supplier, to perform a portion of the Work at the Site or

to Furnish Materials or equipment to be incorporated into the Work by Contractor, Subcontractor or Lower-Tier Subcontractor, as applicable.

- 69. **Mark-up:** The charge added to Contractor's costs as part of a Change Order to cover overhead, profit and any other costs not recognized as Direct Costs. Refer to Section 6.04.B.
- 70. **Material(s):** Machinery, manufactured articles, Materials of construction (fabricated or otherwise), and any other classes of material that are necessary to perform or otherwise are to be furnished in connection with the Work or Contract, except where a more limited meaning is indicated by the context.
- 71. **Milestone:** A principal date or time specified in the Contract Documents relating to completion of a specified portion of the Work or other intermediate event prior to Substantial Completion.
- 72. **Muni:** The San Francisco Municipal Railway and its transit operations, a division of the SFMTA.
- 73. **Nighttime Hours:** Unless otherwise specified, the hours of 8 PM to 7 AM.
- 74. **Non-conforming Work:** Work that is unsatisfactory, faulty, defective, or deficient; Work that does not conform to the requirements of the Contract Documents; Work that does not meet the requirements of inspection, reference standards, tests, or approval referenced in the Contract Documents; or Work that has been damaged prior to Final Acceptance.
- 75. **Notice of Default:** Refer to Section 14.01.B.
- 76. **Notice of Potential Claim:** Refer to Section 13.03.
- 77. **Notice to Proceed (NTP):** The written notice issued by the City to Contractor authorizing Contractor to proceed with the Work and establishing the date of commencement of the Contract Time, which shall be the date of the Notice unless specifically otherwise stated in the body of the Notice. Refer to Section 1.03.
- 78. **Notice of Substantial Completion:** The written notice issued by the City to Contractor acknowledging that the Work is Substantially Complete as determined by the Engineer. Said Notice shall not be considered as Final Acceptance of any portion of the Work or relieve Contractor from completing the Punch List items attached to said Notice within the specified time and in full compliance with the Contract Documents.
- 79. **Option:** Refer to "Alternate Bid Item."
- 80. **Owner:** Refer to "City."
- 81. **Partial Utilization:** Right of the City to use a portion of the Work prior to Substantial Completion of the Work. (Refer to "Beneficial Use.")
- 82. **Plans:** Refer to "Drawings."
- 83. **Product:** A manufactured Item provided by Contractor that may include assemblies, appurtenances, and installation hardware.
- 84. **Project:** The thing to be constructed, either wholly or partially under this Contract; the end result of the Work.

85. **Proposal:** An offer to perform the Work as required by the Contract Documents submitted by a Bidder to the SFMTA, which shall include quantities and prices listed in the offer. Refer to Schedule of Bid Prices.
86. **Proposer:** Refer to "Bidder."
87. **Proposed Contract Change (PCC):** A document prepared by the City requesting a quotation of cost or time from Contractor for additions, deletions or revisions in the Work initiated by the City or Contractor.
88. **Provide:** Furnish and Install or Supply and Install, complete and in place, at the Site.
89. **Public Right-of-Way:** The "Public Right-of-Way," as defined in San Francisco Public Works Code section 2.4.4, and for purposes of the Contract, the area of a City street and adjacent sidewalks or underground transit path of travel, within the Construction Area or Site, where Contractor will perform Work or that will be impacted by the Work.
90. **Punch List:** The list of Work to be completed or deficient Work to be corrected that Contractor must complete or correct as a condition of Final Acceptance.
91. **Reference Documents:** Documents identified in the Bid Documents that contain information relevant to the Work or Site and Construction Area that the City believes may be useful to Contractor but that are not part of the Contract. Refer to Division 1.
92. **Regular Working Hours:** 7:00 a.m. to 5:00 p.m., Monday through Friday, except holidays observed by the City.
93. **Request for Information (RFI):** A document prepared by Contractor requesting information from the City regarding the Work, Project or Contract Documents.
94. **Request for Substitution (RFS):** A request from Contractor in accordance with the conditions specified in Division 1 to substitute an Item, type of construction, or process indicated in the Contract Documents with another Item, type of construction or process that shall be equal in all respects to that so indicated. Refer to Section 3.14.
95. **RFI Response:** A reply or substantive response issued by the SFMTA in response to a Request for Information or Request for Substitution.
96. **San Francisco Municipal Transportation Agency (SFMTA or Agency):** The department of the City and County of San Francisco that provides public transportation in San Francisco, as established under section 8A of the City Charter. (Refer to "City.")
97. **Schedule (Project Schedule):** The schedule for the performance of the Work, which is the Baseline Schedule amended during the course of the Project.
98. **Schedule of Bid Prices:** Contractor's stated prices to perform the Work submitted as part of Contractor's Bid, as amended and approved by the Engineer.
99. **Section:** A numbered provision of these General Provisions that are subparts of an Article. The term Section as to the Special Provisions refers to those provisions identified by a unique number in the title. A

Section in the Technical Specifications is an individually numbered chapter of a Division of the Technical Specifications, as indicated in the title of the Section.

100. SFMTA Board of Directors: The policy body of the SFMTA acting under authority of the City Charter and Codes.
101. Shall: Refer to Section 1.07.W.
102. Site: Geographical location of the Work as indicated in the Contract Documents; also generally referenced as the job site, work site, work area, location, project site, and construction site, both in capitalized and in lower case lettering.
103. Special Provisions: The part of the Contract Documents titled "Special Provisions" that amends, modifies, or supplements these General Provisions.
104. Specifications: The directions, provisions and requirements governing Contractor's performance of the Work that are set out in the Contract Documents.
105. Special Inspections: Inspections that as determined by applicable Codes must be conducted by a specially certified inspector under contract with the City.
106. Special Work: Work that is denoted in the Specifications or is that applicable Codes characterizes as Special Work, which requires personnel or a subcontractor that has specialized skills or experience.
107. Specialized Equipment: Equipment and tools necessary for the Work listed in Division 1 or the Technical Specifications that are not also listed in the Caltrans "Labor Surcharge & Equipment Rental Rate Book" or in the PRIMEDIA "Rental Rate Blue Book" (that is, equipment necessary to complete the Work that is not General Equipment).
108. Subcontractor: A person or entity who has a direct contract with Contractor to perform a portion of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and neuter in gender and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. The term "Subcontractor" shall also include contracts assigned to Contractor, if so provided in the Supplementary Conditions or provided in the Technical Specifications (Division 1). The term "Subcontractor" whether or not capitalized as used in the Contract Documents may in some contexts refer to any or all subcontractors of every tier.
109. Subsection: A numbered provision that are subparts of a Section.
110. Substantial Completion: The stage in the progress of the Work, when the Work (or a specified part thereof) is sufficiently complete (a.k.a. "Substantially Complete") in accordance with the Contract Documents, including receipt of a temporary certificate of occupancy or operation, if applicable, issued by the agency having jurisdiction over the Work, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended.

- 111. Supplier: A manufacturer, fabricator, distributor, or vendor having a direct contract with Contractor or with a Subcontractor to furnish Materials or equipment to be incorporated in the Work.
- 112. Technical Specifications: The directions, provisions, and requirements contained in the documents identified as Divisions 1 and above, including any plans or Drawings attached or referred to and such additional provisions as may be necessary, pertaining to the performance of the Work and to the furnishing of Material.
- 113. Term: The period which the Contract is in effect, as measured as between the Effective Date of the Contract and the date of the SFMTA's termination of the Contract or Final Acceptance of the Work.
- 114. Time: Refer to Contract Time.
- 115. Total Bid Price: The total sum of prices Contractor states in the Schedule of Bid Prices submitted as part of the Contractor's Proposal to perform the Work, as approved by the Engineer.
- 116. Unavoidable Delay: An interruption of the Work beyond the control of Contractor that Contractor could not have avoided by Contractor's exercise of care, prudence, foresight, and diligence. Refer to Section 7.02.H.
- 117. Unilateral Contract Modification: A written Change Order to Contractor issued by the Engineer after the Effective Date of the Agreement. Refer to Section 6.03.
- 118. Will. Refer to Section 1.07.W.
- 119. Work: The performance by Contractor of its responsibilities and obligations as Specified or otherwise set forth in the Contract Documents, and the results of Contractor's efforts. Work shall include, but not be limited to, providing all labor, services, Materials, equipment, and documentation required by the Contract Documents. References in the Contract Documents to "Work" may be to Items of Work.
- 120. Working Day (Work Day): Any day of the week except Saturdays, Sundays and holidays observed by the City.

1.02 CONDITIONS OF BIDDING AND INTERPRETATION OF PROPOSAL

In submitting its Proposal (Bid), a Bidder agrees to meet and abide by the following requirements and conditions:

A. Format and Submission Requirements.

- 1. Required Form. The Proposal for performing the required Work and furnishing the required materials must be made on the blank form of Proposal hereto attached.
- 2. Submission of Proposal. The Proposal must be enclosed in an opaque envelope addressed to the Agency, sealed and endorsed with the superscription indicated on the cover page of the Specifications. Proposals will be received at the designated location at any time prior to the deadline (date and hour) for submission stated in the Invitation for Proposals.
- 3. Agency's Rights.

- a. The Agency reserves the right to waive technical defects in Bids and the bidding process. The Agency reserves the right to determine in its sole discretion whether a Proposal is responsive or a Bidder responsible.
- b. As a condition of Award, the SFMTA reserves the right prior to Award to seek information from any Bidder concerning any statement in a Proposal that the Agency finds ambiguous regarding the Bidder's qualifications, expertise or capacity (i.e., the Bidder's responsible status) to perform the Work.

4. Multiple Proposals Prohibited. No person, firm, or corporation shall make, file, or be interested in more than one Proposal for the same Work, except where alternative bids are expressly provided for in the Bid Proposal Form. (However a person, firm or corporation that has quoted prices to one Bidder is not thereby disqualified from quoting prices to other Bidders.)
5. Collusion Prohibited. Each Bidder must submit a Non-Collusion Declaration with its Proposal.

B. Interpretation of Proposal.

1. Bid Proposal Form Must Be Completed Fully. Blank spaces in the Bid Proposal Form must be properly filled in, and the provisions and wording of the Proposal must not be changed, supplemented, deleted or omitted, or exceptions stated thereto. Statements or communications accompanying bids and serving to qualify such bids will not be considered in awarding the Contract and are not included in, part of, or evidence of a contract or amendment of contract, and such communications may, if deemed improper by the City, render a Proposal nonresponsive and thereby disqualify the Bidder.
2. Calculation of Prices for Blank Bid Items. If a Bidder leaves a single blank space on the Bid Proposal Form where a price should be listed and the sum of the prices for all other listed Items equals the Bid Price, the price bid for the Item left blank shall be zero and Contractor shall provide the Work described in that Item for no additional cost to the City. If a Bidder leaves a single blank space on the Bid Proposal Form where a price should be listed and the sum of the prices for all other listed Items is less than the Bid Price, the price bid for the Item left blank shall be calculated as the difference between the sum of the Item prices listed and the Bid price. If a Bidder leaves two or more spaces in the Bid Proposal Form blank where a price should be listed, the Proposal will be rejected as non-responsive. An intentional mark in a space for a price in the Bid Proposal Form that does not indicate a number shall be interpreted as a "zero" and Contractor shall perform that Work as included in the Bid Price.
3. Conflict. In case of conflict or ambiguity between words and numerals, the words, unless obviously incorrect, will govern.
4. Unit Prices. In unit price bids, if the unit price and the total price stated in the Proposal conflict, or if the amount shown as the total of two or more item prices is not the true sum of the Item prices, it will be presumed that the unit price in the first case, or the item prices in the second case, correctly represent the Bidder's price, and the corrected totals will be used in comparison of bids.

5. Interpretation of Contract. The rules of contract construction stated in this Section 1.02 shall serve to interpret the Proposal prior to Award and to interpret the Contract following Award.

C. Site Investigation and Review of Contract Prior to Bidding.

1. Contractor represents and affirms that prior to submitting its Proposal, Contractor has: (a) carefully and personally investigated the Site, (b) carefully evaluated all existing work in place or past work performed by others for this Project; (c) carefully reviewed the Specifications, Drawings, and Reference Documents, and (d) conducted other such investigation of the Specifications, other contractual requirements and actual Site conditions and requirements of the Work by such means as Contractor deemed appropriate; (e) investigated any unusual difficulties that may be encountered in the performance of the Work to confirm Contractor's ability to perform the Work required; (6) reviewed the character and amounts of all classes of labor, equipment and material necessary to carry out the Work; (g) carefully considered all other circumstances and conditions affecting the cost of the Work. Contractor represents that it has included in its Proposal all expenses it may incur to complete the Work in accordance with the Contract.
2. Contractor represents and affirms that prior to submitting its Proposal, it carefully reviewed the existing Contract Documents, and that it requested clarification of any provision therein that appeared ambiguous or otherwise unclear in its requirements or intent.
3. Contractor represents and warrants that: (a) it is fully capable and qualified to perform the Work; (b) all conditions and requirements of this Contract are within reason and can be met by Contractor; and (c) it has read, understands and will comply with every provision of the Contract

D. Contractor's Experience. Contractor affirms and warrants that it has the necessary experience in the types of the Work to be performed, and that it possesses the ability, personnel, equipment and financial resources to perform the Work satisfactorily within the Contract Time specified and for the Contract Amount presented in its Proposal. Information regarding Bidder's experience and qualifications must be submitted by the Bidder on forms provided for that purpose. A Bidder must provide complete and comprehensive answers to all questions. The SFMTA will consider such information in determining whether the Bidder is responsible and whether the Proposal is responsive.

E. Contractor's License. Contractor represents that for a federally funded contract, prior to Award of the Contract, Contractor and each of its Subcontractors was licensed with the Department of Consumer Affairs of the State of California in the class appropriate for the Work contemplated. For a contract that is not federally funded, Contractor represents that at the time it submitted its bid, Contractor and each of its Subcontractors was licensed with the Department of Consumer Affairs of the State of California in the class appropriate for the Work contemplated. Contractor understands and agrees that failure of Contractor or any of its Subcontractors to possess such current license(s) at the time required (as stated above) will be deemed sufficient cause to determine that Contractor is not responsible and on that basis reject the Proposal or to terminate the Contract, if awarded. Contractor understands and agrees that failure to maintain said licensed status from the time of submission of Proposal or Award of Contract (as provided herein) for the entire term (Contract Time) of this Agreement shall constitute a material breach of this Agreement.

F. Subcontractor Listing.

1. Contractor represents and affirms that it has in its Proposal listed on the form provided by the City each subcontractor who will perform any portion of the Work in excess of one-half of one percent of the Bidder's total bid price, the following information:
 - a. Name of Subcontractor.
 - b. Address of Subcontractor.
 - c. Brief description of the portion of Work to be performed under subcontract.
 - d. Amount to be paid for Subcontractor's work, labor or service.
 - e. Bid submitted on or after March 1, 2015 must indicate that Bidder is currently registered with the California Department of Industrial Relations (DIR) as required by California Labor Code section 1725.5
2. Contractor shall comply with the requirements of California Public Contract Code section 4104 as to Contractor's division of the Work and assignment of listed Subcontractors. Where two or more Subcontractors are listed to perform the same type of work (by trade), Contractor shall indicate the portions of the Work to be assigned to each.
3. Contractor shall on request furnish to SFMTA information as to the technical experience, financial status, and adequacy of the plant or equipment of each Subcontractor listed in the Proposal.

G. City's Right to Reject Bids, Terminate and Void the Contract.

1. Rejection of Bids. The Agency may reject any and/or all Bids for any reason. The Agency may also reject any portion of any Bid prior to award of the Contract provided such rejection will not affect the determination of the lowest Bid.
2. The City reserves the right to terminate the Contract (and seek damages) or deem the Contract void at its inception (and seek return of all amounts paid) for any material false statement in Contractor's Bid Documents that is detrimental to the City and that was made in bad faith, that was intended to mislead or deceive the City, or that had the effect of misleading or deceiving the City and that Contractor with knowledge of said effect failed to correct, or other statement or action of Contractor that constitutes fraud or otherwise is a legal basis for termination or voiding of the Contract.

H. Surety Bond or Certified Check Must Accompany Proposal. The Proposal shall be accompanied by a corporate surety bond in the form herein set forth, or by a certified check on a solvent bank of the State of California, payable on sight to the City and County of San Francisco, the amount of which shall not be less than ten percent of the total amount bid for the proposed work or improvement. **THE SFMTA WILL NOT CONSIDER A PROPOSAL UNLESS IT IS ACCOMPANIED BY SUCH BOND OR CHECK THAT MEETS THESE REQUIREMENTS.** When Bids have been received and checked by SFMTA, all such bonds or checks will be returned to the respective Bidders, after the Contract has been awarded and the successful Bidder has executed it and filed satisfactory bonds and certificates of insurance as herein specified, or after all Proposals have been rejected if no award is made.

I. Estimate of the Amount of Work to be Performed. The amount of each class of Work included in a unit price will have been preliminarily estimated by the Agency, as shown on the Schedule Of Bid Prices in the Proposal, and the Agency will use this estimate as a basis

for comparing Bids. The Agency does not expressly or by implication agree that the actual amount of Work will correspond with the amount shown or estimated, but reserves the right to increase or decrease the amount of any class or portion of the Work, to leave out an entire Bid Item or Items, or so add work of a class not included in the Proposal, when in its judgment such change is in the best interest of the City. No such change in the Work shall be considered as a waiver of any other condition of the Contract.

J. **Balanced Proposal.** Contractor represents that its Proposal is not improperly balanced, that is, the prices listed for each line item in the Bidder's Proposal must accurately represent the Bidder's costs for those bid item(s) with an addition of fair profit.

1.03 AWARD, EXECUTION AND CERTIFICATION OF CONTRACT; CONTRACT TIME

In submitting its Proposal, a Bidder agrees to the requirements and conditions stated in this Section 1.03:

A. **Award of Contract.** In accordance with California Labor Code sections 1771.1 and 1725.5, no contract can be awarded to a Bidder on or after April 1, 2015 without proof that the Bidder and all identified subcontractors are currently registered with the California Department of Industrial Relations. The award of the Contract, if it be awarded, will be made by SFMTA pursuant to the provisions of Chapter 6 of the San Francisco Administrative Code as soon as practicable after the review of the Proposals submitted.

B. **Execution of Contract and Effective Date.** Within ten Days from the date that the SFMTA issues notice of award of the Contract, the Bidder to which the SFMTA issues the notice must deliver to SFMTA a fully executed Contract, together with the bonds and insurance certificates and policy endorsements required herein. The Effective Date of the Contract shall be as defined herein, the date specified in a notice issued by the SFMTA to Contractor that the Controller has certified the funds for the Contract. Said notice of certification of funds may be contained in the Notice to Proceed, in which the City will direct Contractor to commence the Work. The Contract Time commences on the date stated in the NTP when Work must begin. If the NTP provides Contractor discretion as when to begin the Work, then Contract Time shall commence on the date that Contractor actually begins the Work. For contracts to be awarded on or after April 1, 2015, proof that Bidder and all subcontractors are currently registered with the California Department of Industrial Relations under California Labor Code section 1725.5 must be submitted five business days from the date of the Bid.

C. **Insurance and Bond Requirements.** See Article 10 and Special Provisions for insurance and bond coverage and documentation requirements. The selected Bidder (Contractor) shall deliver the required insurance documents to the SFMTA within ten Days from the date that the SFMTA issues notice of Award of the Contract.

D. **Failure to Execute Contract.** Failure of the selected Bidder to execute the Contract and to submit the required bonds and insurance to the SFMTA within the time limits as prescribed here and in the Special Provisions and Article 10 shall be just cause for the forfeiture of the Bid Bond. If the selected Bidder shall fail or neglect to enter into the Contract and file the required bonds and insurance documents, the Agency shall deposit the Bid Bond with the Treasurer of the City and County for collection and the proceeds thereof shall be retained by the SFMTA as liquidated damages for the failure of such Bidder to enter into such Contract, unless upon recommendation of the Agency, the SFMTA's Board of Directors, by resolution, approves the return of such bond or check. The City's retention of the Bid Bond as liquidated damages shall not in any way impair the rights of the City set out in Section 1.02.H.

E. **Certification of Contract.** The Contract, if awarded, shall not be effective until the Controller has certified that funds for the Contract or a portion thereof specified by the SFMTA are available in the budget or by supplemental appropriation. Refer to Section 1.05.

F. Failure to Certify Contract. If the Contract is not certified by the Controller (as provided in Section 1.05) within 90 Days after the award of the Contract by the Agency, the Agency may cancel the award of Contract, and the City, including the Agency, its directors, officers, and employees, shall have no liability by reason of the cancellation of the award of the Contract.

G. Contract Time. Contractor shall complete the Work within the Contract Time stated in the Special Provisions. (The term "time" is synonymous to the Contract Time, when "time" is used to reference to a period in which Contractor shall perform Work or a specific portion of the Work.) Contract Time commences on the date stated in the NTP on which Contractor is directed to commence the Work. If more than one NTP is issued, the first NTP issued shall establish the date for commencement of Contract Time.

1.04 CONTRACT DOCUMENTS AND REQUIREMENTS

A. The Contract Documents establish the rights, obligations and responsibilities of the parties. The Contract Documents listed below form the entire Contract and set out the requirements for the performance of the Work, and consist of all of the following:

1. Form Agreement;
2. General Provisions;
3. Special Provisions;
4. Contract Drawings and Standard Drawings and all revisions thereto;
5. Drawings and Specifications that may be provided during the course of the Work;
6. Reply/ies to RFI(s);
7. Technical Specifications (Divisions 1 and above);
8. Geotechnical Baseline Report;
9. Geotechnical Data Report (and supplemental investigations);
10. Executed Change Orders including Unilateral Contract Modifications issued after execution of the Contract;
11. Payment and Performance Bonds;
12. Documents specifically incorporated by reference in the Contract;
13. Addenda to the Contract;
14. All forms and signature pages submitted by Contractor with its Proposal; and
15. All provisions of the Bid Documents not in conflict with the foregoing.

See Section 1.09 for order of precedence of Contract Documents.

B. Where items of Work are performed under subcontracts, each item shall be subject to the requirements of the Contract. But nothing in the Contract Documents shall be construed to create a contractual relationship between the City and a Subcontractor, Supplier, Lower Tier Subcontractor or Supplier of any tier, or any person or entity other than the City and Contractor.

C. The requirements set out in the Specifications contain information necessary for completion of every part of the Work.

D. If the Work to be completed under this Contract is funded in part by federal grants, Bidders are cautioned to review carefully the federal contract requirements set out in the Special Provisions. Should any provision of this Contract conflict with any requirement established by federal regulations, statutes or other federal law, including but not limited to any federal contract requirements set out in the Special Provisions, the federal requirement shall prevail.

1.05 CERTIFICATION OF FUNDS

THIS SECTION 1.05 CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

A. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation. The City's obligation hereunder shall not at anytime exceed the amount certified by the Controller for the purpose and period stated in such certification. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. Funding for the Contract may be certified in parts, as funds become available. Contractor shall not perform Work in excess of the amount certified for the Contract Sum.

B. The City and its employees and officers are not authorized to offer or promise to Contractor: (1) additional funding for the Contract which would exceed the maximum amount of funding provided for in the Contract for Contractor's performance under the contract or (2) additional funding beyond that certified by the Controller. Additional funding for the Contract in excess of the maximum provided in the Contract and certified by the Controller shall require lawful approval by the Agency and certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the Contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

1.06 SEVERABILITY

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

1.07 MEANING AND INTENT OF CONTRACT DOCUMENTS

A. **Complete Agreement.** The Contract Documents constitute an integrated contract that contains the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract Documents may be modified or amended only as specified in Article 6. For convenience of the parties, the City may prepare a set of conformed Contract Documents that will incorporate any Addenda issued that amend to initial Contract Documents issued for Bid. The Conformed Documents are not Contract Documents, but are working documents that shall be considered as memorializing the agreement of the parties to the extent that Conformed Documents do not conflict with the original Contract Documents and Addenda issued to Bidders. Should the Conformed Documents conflict with the original Contract Documents as amended by the issued Addenda, the original Contract Documents and Addenda shall govern.

B. **Contract Documents to be Read as a Whole.** The Contract Documents are complementary; what is required by one shall be as binding as if required by all. The Contract

Documents are intended to be read together and integrated as a whole, and shall be construed and interpreted in a manner so as to avoid any conflicts to the greatest extent possible. It is expressly agreed by and between Contractor and the City that should there be any conflict between the terms and conditions stated in the Contract Documents and Contractor's Bid, the Contract Documents shall control and nothing herein shall be considered as an acceptance of any terms of the Bid that conflict with the Contract Documents. The Contract Documents shall be construed in accordance with the laws of the State of California, the City's Charter and Administrative Code, and applicable building codes and statutes of the City (or the also the county where the Work is to be performed if other than the City and County of San Francisco).

C. Intent of Contract Documents. The intent and ultimate purpose of the Contract Documents is to describe the Work to be performed that will result in a functionally complete and operational Project (or specified part thereof) to be constructed in accordance with the Contract Documents. Contractor shall provide all Work, Materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage that are necessary to properly execute and complete the Work in accordance with the requirements of the Contract Documents for the Contract Sum stated in Contractor's Bid and within the Contract Time stated in the Contract Documents.

D. Interpretation of Technical Specifications. Should any discrepancy appear or any misunderstanding arise as to the requirements or import of anything contained in the Technical Specifications or Drawings, the matter shall be referred to the Engineer, who shall decide the true intent and meaning as construed by the Agency, and that decision shall be administratively binding on Contractor unless appealed in accordance with the provisions of this Agreement. The Agency will provide suitable instructions or corrections when any such error or omission is discovered.

E. Stated Amounts. In case of conflict between words and numerals stating amounts in the Contract, the words, unless obviously incorrect, will govern.

F. Review of Drawings. Contractor shall review (check) all Drawings furnished to Contractor immediately upon their receipt and shall promptly notify the Engineer of any discrepancies within the Drawings or in conflicts between the Drawings and the Technical Specifications. Figures shown on Drawings shall in general be followed in preference to scale measurements. Large scale Drawings shall in general govern over small scale Drawings. Contractor shall compare all Drawings and verify the figures before laying out the Work, and shall be responsible for any errors which might have been avoided by such comparison.

G. Deviations from Technical Specifications and Drawings. Contractor shall not deviate from the Drawings and the dimensions therein given, whether or not an error is believed to exist, except as specifically directed or approved by the Engineer in writing.

H. Conflicts and Omissions in Technical Specifications and Drawings. Anything stated in the Technical Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Technical Specifications, shall be of like effect as if shown or mentioned in both. Omissions from the Drawings or Technical Specifications or the misdescription of details of Work that are manifestly necessary to carry out the intent of the Drawings and Technical Specifications or which are customarily performed shall not relieve Contractor from obligation to perform such omitted or misdescribed details or Work; Contractor shall be perform such Work as if it was fully and correctly set forth and described in the Drawings and Technical Specifications and the performance of such omitted or misdescribed Work shall be Incidental Work and included in the Contract Sum.

I. Arrangement and Titles of Drawings. Arrangement and titles of Drawings, and organization of the Technical Specifications into Divisions, Articles and Sections in the Contract Documents shall not be construed as segregating the various units of material and labor, dividing the Work among Subcontractors, or establishing the extent of Work to be performed by

any trade. Contractor may arrange and delegate its Work in conformance with trade practices, but Contractor shall be responsible for completion of all Work in accordance with the Contract Documents. The City assumes no liability arising out of jurisdictional issues raised or claims advanced by trade organizations or other interested parties based on the arrangement or manner of subdivision of the content of the Drawings and Technical Specifications. The City is not responsible to act as arbiter for or to otherwise establish subcontract limits between portions of the Work.

J. Common Terms. In interpreting the Contract Documents, words describing Materials or Work with a common or well-known technical or trade meaning, unless otherwise specifically defined in the Contract Documents, shall be construed in accordance with such well-known meaning.

K. Representative Details in Drawings. A typical or representative detail on the Drawings shall constitute the standard for workmanship and material throughout corresponding parts of the Work. Where necessary, and where reasonably inferable from the Drawings, Contractor shall adapt such representative detail for application to such corresponding parts of the Work. The details of such adaptation shall be submitted to the City for approval. Repetitive features shown in outline on the Drawings shall be in exact accordance with corresponding features completely shown.

L. Clarification. In the event of a conflict in the Contract Documents regarding the quality of an Item, Material or product, Contractor shall request a clarification from the City as provided in Article 6 before procuring said product or proceeding with the Work affected thereby.

M. General Presentation of Drawings. The layout of mechanical and electrical systems, equipment, fixtures, piping, ductwork, conduit, specialty items, and accessories on the Drawings is shown in diagrams and symbols to illustrate the relationships existing between the parts of the Work; all variations in alignment, elevation, and detail required to avoid interferences and satisfy architectural and structural limitations are not necessarily shown. If rerouting (i.e. relocating a duct, pipe, conduit or similar utilities from the indicated room or space to another room or space to avoid structural interferences) results in a total linear footage which exceeds 125 percent of the indicated route if the structural interferences did not exist, then Contractor will be compensated for the amount in excess of 125 percent under the provisions for Change Orders set out in Article 6. Actual layout of the Work: (1) shall be carried out without affecting the architectural and structural integrity and limitations of the Work; (2) shall be performed in such sequence and manner as to avoid conflicts; (3) shall provide clear access to all control points, including valves, strainers, control devices, and specialty items of every nature related to such systems and equipment; shall obtain maximum headroom; and, (4) shall provide adequate clearances as required for operation and maintenance, and as required by the San Francisco Building Code or Code of other public authority having jurisdiction.

N. Drawings Not to Scale. Unless otherwise indicated in the Contract Documents, the Drawings shall not be scaled for dimensions when figured dimensions are given, or when dimensions could be calculated or field measured. When a true dimension cannot be determined from the Drawings or field measurement, and such is required, Contractor shall request promptly the same from the City and shall obtain a Clarification or written interpretation from the City before proceeding with the Work affected thereby.

O. Work Is Inclusive. Contractor's performance of the Work in accordance with the requirements provided, described, or referenced in the Contract Documents is included within and incidental to the Work and is compensated within the Contract Sum, and no additional compensation shall be due Contractor for its compliance with the Contract.

P. Omitted Words. In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. In any provision of the Agreement describing an obligation, duty, or performance requirement where the party responsible or obligated or having the duty is not clearly stated, or where the provision is written in the passive voice or third person, it shall be presumed that Contractor is the responsible and obligated party, unless such result is clearly contrary to the intent and meaning of the provision or would otherwise render an absurd result. Contractor shall seek a Clarification from the Engineer as to any provision of the Contract of which Contractor questions whether it is the obligated party. The determination of the Engineer as to such questions shall be final and binding.

Q. Determinations of the Engineer. The words "as directed" shall mean directed in writing by the Engineer. The words "approved," "acceptable," "satisfactory," "as permitted" or words of like import, shall mean approved in writing by the Engineer. All references in the Contract Documents to "satisfactory," "sufficient," "reasonable," "acceptable," "suitable," "proper," "correct," or adjectives of like effect shall be construed to describe an action or determination of the Engineer for the sole purpose of evaluating the completed Work for compliance with the requirements of the Contract Documents and conformance with the intent as expressed in this Section 1.07. Such determinations of the Engineer shall be final and conclusive.

R. Titles. Document, Division, Article, Section, and Subsection titles and references are for the convenience of the reader, but are not operative terms of the Agreement. The term "Section" refers to numbered parts within these General Provisions that are subparts of an Article, unless otherwise indicated. The term Section as to the Special Provisions and Technical Specifications refer to those parts identified by a unique number in the title.

S. Conflict between Drawings and Site Conditions. When there is a conflict between existing Site conditions and information indicated on the Drawings, other than Differing Conditions as described in Section 3.04, the existing Site conditions shall govern. If the Engineer determines that Contractor knew or should have known of such conflicts based on its reasonable investigation of the Site prior to submitting its Bid, Contractor shall perform the Work and adjust to the existing Site conditions at no additional cost to the City.

T. Site Visit. Prior to start of Work, Contractor and the Engineer shall visit the Site, Construction Area and adjacent properties as necessary to document existing conditions including photographs. Contractor shall document these conditions and shall submit prior to the start of Work a complete report of existing conditions determined by the Site survey as indicated in Division 1 of the Specifications.

U. Standards to Apply Where Detailed Technical Specifications Are Not Furnished. Wherever in the Technical Specifications, or in any orders given by the Engineer pursuant to or supplementing the Technical Specifications, it is provided that Contractor shall furnish Materials or manufactured articles or shall do Work for which no detailed Technical Specifications are set forth, the following general requirements shall apply:

1. The Materials or manufactured articles shall be new and of the best grade, in quality and workmanship, obtainable in the market from firms of established good reputation, or, if not ordinarily carried in stock, shall conform to the usual standards for first-class Materials or articles of the kind required, with due consideration of the use to which they are to be put.
2. Work for which no detailed Technical Specifications are set forth herein shall conform to the usual standards applicable in the San Francisco Bay Area for first-class work of the kind required.

V. **Engineer's Authority.** All references in the Contract Documents to satisfactory, sufficient, reasonable, acceptable, suitable, proper, correct, or adjectives of like effect shall be construed to describe an action or determination of the Engineer for the sole purpose of evaluating the completed Work for compliance with the requirements of the Contract Documents and conformance with the intent as expressed in Subsection 1.07.C, above. Such determinations of the Engineer shall be final and conclusive.

W. **Use of the Terms Shall, Will and May.** "Shall" and its negative "shall not" are used to indicate a requirement that is contractually binding and must be fulfilled within the period specified in the Contract or the Contract Time, whichever is less. Where so directed in the Contract, the Contractor must verify its fulfillment of a requirement that employs the term shall. "Will" and its negative "will not" are used for declaration of purpose or expression of simple futurity or statement of fact. "May" is used to indicate the exercise of discretion by the acting party.

1.08 AMENDMENT OF CONTRACT DOCUMENTS

A. The Contract Documents may be amended after execution of the Agreement to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one of the following ways: (1) Change Order, or (2) Unilateral Contract Modification. Refer to Article 6.

B. Change Orders must be in writing and signed by authorized persons. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide Materials, equipment and supplies that would result in Contractor performing services or providing Materials, equipment and supplies that are beyond the scope of the services, Materials, equipment and supplies agreed upon in the Contract or in excess of the Contract Amount certified by the City's Controller, unless said request is memorialized in a written Change Order and approved by the Agency in accordance with applicable City law and SFMTA policies. The City is not required to reimburse Contractor for services, Materials, equipment and supplies that are provided by Contractor which are beyond the scope of the services, Materials, equipment and supplies agreed upon in the Contract and which were not approved by a written modification to the Contract executed by the Agency as required by law and SFMTA policy. The provisions of this Section shall govern the City's obligation and liability to compensate Contractor for work outside the approved scope of the Contract, notwithstanding any other provision of the Contract.

C. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways: (1) a Clarification, written interpretation or other bulletin issued by the City; or (2) the City's review and acceptance of a shop drawing or sample or other Submittal in accordance with Section 2.01. A Clarification shall not constitute a Contract Modification but is only a statement of the City's interpretation of the Contract Documents upon which Contractor may rely. The City's response to an RFI or to a Bidder's question prior to Award shall not modify the Contract, but only clarifies the meaning of a Contract Document, upon which Contractor may rely as to the specific matter addressed in the response.

1.09 PRECEDENCE OF CONTRACT DOCUMENTS

A. In the case of discrepancy or ambiguity in the Contract Documents or conflict among provisions of the Contract Documents, the following order of precedence shall apply to the construction or interpretation of the Contract Documents. The Contract Documents are listed in order of highest (1) to lowest precedence (12):

1. Approved Contract Modifications (Change Orders) in inverse chronological order, and in same order as specific portions they are modifying.

2. Addenda.
3. Special Provisions.
4. General Provisions.
5. Contract Drawings (specific to the Work).
6. Technical Specifications (Division 1).
7. Technical Specifications (Divisions 2 and above).
8. Standard Drawings (such as DPW standards).
9. Geotechnical Baseline Report.
10. Geotechnical Data Report (and supplemental investigations).
11. Utility Standards.
12. Industry Standards specifically incorporated (to the extent incorporated into a Contract Specification).

B. With reference to the Drawings the order of precedence shall be as follows (listed in order of highest to lowest precedence):

1. Written numbers over figures, unless obviously incorrect.
2. Figured dimensions over scaled dimensions.
3. Large-scale Drawings over small-scale Drawings.
4. Schedules on Drawings over conflicting information on other portions of Drawings.
5. Detail Drawings govern over general Drawings.
6. Drawing with highest revision number prevails over drawing of same Item with lower revision number.

1.10 REUSE OF CONTRACT DOCUMENTS

The Contract Documents were prepared for the Work of this Contract only. No part of the Contract Documents shall be used for any other construction or for any other purpose except with the written consent of the City. The City shall have no liability for any unauthorized use of the Contract Documents, and the risk and liability for such unauthorized use shall be wholly assumed by the user.

1.11 CONTRACTOR REVIEW

Contractor hereby acknowledges that prior to and in preparation for submitting its Proposal, Contractor: (a) read every part of the Contract Documents, including but not limited to the General Provisions, Special Provisions and the Technical Specifications; (b) examined the Drawings; (c) examined the Site and the surrounding Construction Area; and, (d) made all inquiries and investigations necessary to enable Contractor to understand thoroughly the intent and ultimate purpose of the Contract and the nature of the Work. Based the aforesaid examination and review, Contractor agrees that it will not hereafter make any claim for increase in Contract Sum or other additional compensation, extension of Contract Time, or other allowance of any sort, based upon or arising out of any alleged misunderstanding by Contractor of any part of the Contract Documents.

1.12 NOTICES

A. **Notices to Contractor.** The address given in Contractor's Proposal is hereby designated as the legal address of Contractor to which the City shall send all required notices,

but Contractor may change said address at any time by providing written notice to the SFMTA. The SFMTA's delivery to the address provided by Contractor or the depositing in any post office or post office box regularly maintained by the United States Postal Service, in a postpaid wrapper, directed to Contractor at such address, of any drawing, notice, letter or other communication, shall be deemed legal and sufficient service thereof upon Contractor.

B. Notices to City. Except as otherwise specifically provided in the Contract Documents, all notices to the City concerning this Contract shall be sent via first class mail to the Engineer with copies to:

SFMTA
Director of Capital Programs and Construction
One South Van Ness Avenue, 3rd floor
San Francisco, CA 94103

and

SFMTA
Deputy for Contract Administration
One South Van Ness Avenue, 3rd floor
San Francisco, CA 94103

1.13 ESCROW BID DOCUMENTS

A. Scope

1. The Contractor shall submit one copy of all documentary information generated in preparation of bid prices for this Contract. This material is hereinafter referred to as "Escrow Bid Documents." The Escrow Bid Documents of the Contractor shall be held in escrow for the duration of the Contract.
2. The submission of the Escrow Bid documents, as with the corporate surety bonds and insurance documents required under the General Provisions, Article 10, is considered an essential part of the Contract Award. Should the Contractor fail to make the submission within the time specified, the Contractor shall be deemed to have failed to enter into the Contract, and the Contractor shall forfeit its bid bond or certified check accompanying the bid, as specified under the General Provisions, Section 1.02,I.
3. The Contractor agrees, as a condition of award of the Contract, that the Escrow Bid Documents constitute all information used in the preparation of its Bid, and that no other bid preparation information shall be considered in resolving disputes or claims.
4. Nothing in the Escrow Bid Documents shall change or modify the terms or conditions of the Contract Documents.

B. Ownership. The Escrow Bid Documents are, and shall always remain, the property of the Contractor, subject to joint review by the City and the Contractor, as provided herein.

C. Purpose. Escrow Bid Documents will be used as a guide to assist in the negotiation of price adjustments and change orders and in the settlement of disputes, claims and other controversies. They will not be used for evaluation of the Contractor's anticipated methods of construction.

D. Format and Contents

1. The Contractor shall submit Escrow Bid Documents in its usual cost estimating format; a standard format is not required. It is not the intention of this Specification to cause the Contractor extra Work during the preparation of its proposal, but to ensure that the Escrow Bid Documents will be adequate to enable complete understanding and proper interpretation for their intended use. The Escrow Bid Documents shall be submitted in the English language.
2. The Escrow Bid Documents shall clearly itemize the Contractor's estimated costs of performing the Work of each bid item contained in the Bid Schedule. Bid items shall be separated into sub-items as required to present a detailed cost estimate and for a detailed cost review. The Escrow Bid Documents shall include all quantity takeoffs, crews, equipment, calculations of rates of production and progress, copies of quotes from subcontractors and suppliers, and memoranda, narratives, add/deduct sheets, and all other information used by the Contractor to arrive at the prices contained in the bid proposal. Estimated costs should be broken down into the Contractor's usual estimate categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials and subcontract costs as appropriate. Plant and equipment and indirect costs should be detailed in the Contractor's usual format. The Contractor's allocation of indirect costs, contingencies, markup and other items to each bid items shall be identified. Escrow Bid Documents shall also include back-up rates and calculations for construction schedule and duration of Work.
3. All costs shall be identified. For Bid items amounting to less than \$10,000, estimated unit costs may be used without a detailed cost estimate, provided that labor, equipment, materials, and subcontracts, as applicable, are included and provided that indirect costs, contingencies, and markup, as applicable, are allocated.
4. Bid Documents provided by the City should not be included in the Escrow Bid Documents unless needed to comply with this provision.

E. Submittal

1. The Escrow Bid Documents shall be submitted in a sealed container within ten Days after the Award. The container shall be clearly marked on the outside with the Contractor's name, date of submittal, Contract name, Contract Number, and the words "Escrow Bid Documents - Open only in the presence of Authorized Representatives of both the City and the Contractor."
2. The Escrow Bid Documents shall be accompanied with a "Bid Documentation Declaration" (see paragraph I), signed by the individual who executed the Bid Proposal, stating that the material in the Escrow Bid Documents constitutes all the documentary information used in preparation of the Bid and the Contractor has personally examined the contents of the Escrow Bid Documents container and has found that the documents in the container are complete.
3. Upon submittal, Escrow Bid Documents will be examined, organized, and inventoried by representatives of the City, together with members of the Contractor's staff who are knowledgeable in how the Bid was prepared.

4. This examination is to ensure that the Escrow Bid Documents are legible and complete. It will not include review of, and will not constitute approval of Contractor's proposed construction techniques, means, methods, estimating assumptions, or interpretations of Contract Documents. Examination will not alter any condition or term of the Contract.
5. If all the documentation required in "Format and Contents" has not been included in the original submittal, additional documentation may be required, at the City's discretion. The detailed breakdown of estimated costs shall be reconciled and revised, if appropriate, by agreement between the Contractor and the City.
6. If the Contractor's Proposal is based upon subcontracting or procuring any part of the Work, each Subcontractor or Supplier whose total price exceeds five percent of the total Contract price proposed by the Contractor, shall provide separate Escrow Bid Documents to be included with those of the Contractor. Such documents shall be opened and examined in the same manner and at the same time as the examination described above for the Contractor.
7. If the Contractor wishes to subcontract or purchase any portion of the Work afterward, the City retains the right to require the Contractor to submit Escrow Bid Documents from the Subcontractor or Supplier before the subcontract or purchase order is approved.

F. Storage. Upon Notice to Proceed, the Escrow Bid Documents of the Contractor will be placed in Escrow for the life of the Contract, at a mutually agreeable institution. The costs of storage will be paid by the Contractor.

G. Examination

1. The Escrow Bid Documents shall be examined by both the City and the Contractor, at any time deemed necessary by both the City and the Contractor, to assist in the negotiation of price adjustments and change orders or the settlement of disputes and claims.
2. Examination of the Escrow Bid Documents is subject to the following conditions:
 - a. The City and the Contractor shall each designate, in writing to the other party and seven Days prior to any examination, representatives who are authorized to examine the Escrow Bid Documents. No other person shall have access to the Escrow Bid Documents.
 - b. Access to the documents may take place only in the presence of duly designated representatives of both the City and the Contractor.

H. Final Disposition. The Escrow Bid Documents will be returned to the Contractor at such time as the Contract has been completed, Final Acceptance has been issued and all claims have been settled.

I. Bid Documentation Declaration. Contractor shall submit Escrow Bid Documents with the following declaration:

THE UNDERSIGNED DECLARES UNDER PENALTY OF PERJURY PURSUANT TO THE LAWS OF THE STATE OF CALIFORNIA THAT THE BID DOCUMENTATION CONTAINED HEREIN CONSTITUTES ALL THE INFORMATION USED IN PREPARATION OF

THE BID AND THAT I HAVE PERSONALLY EXAMINED THESE CONTENTS AND HAVE FOUND THAT THIS BID DOCUMENTATION IS COMPLETE.

By:

Title:

Firm: Date:

ARTICLE 2 -- CITY'S RESPONSIBILITIES AND RIGHTS

2.01 ADMINISTRATION OF THE CONTRACT

A. Administration. The City will administer the Contract as described in the Contract Documents. (See this Article 2 and Division 1 for administrative requirements and procedures.)

B. Engineer and Other City Representatives. The Department Head will designate in writing the Engineer (sometime referenced as the "City Representative"), who will be the authorized representative of the Agency with limited authority to act on behalf of the Agency. The Agency may at any time during the performance of this Contract make changes in the authority of the Engineer or other representative or may designate additional representatives in accordance with SFMTA policies and City Charter and Codes. Any such changes will be communicated to Contractor in writing. Contractor assumes all risks and consequences of performing work, expending funds, or assuming risk pursuant to any order, including but not limited to instruction, direction, interpretation or determination, of anyone not authorized to issue such order.

C. Authority of the Engineer. Except as otherwise expressly provided in the Contract Documents, the Engineer shall decide all questions that may arise as to the quality or acceptability of Materials furnished and Work performed, and as to the manner of performance and rate of progress of the Work; all questions that may arise as to the acceptable fulfillment of the Contract on the part of Contractor; and all questions as to compensation. The Engineer shall have authority to enforce and make effective such decisions and orders that Contractor fails to carry out promptly (following notice to Contractor and provision of reasonable time to perform).

D. Review of Submittals. The SFMTA will timely review Contractor's submittals. The review, approval, or other action taken by the City or by the City's design consultants upon Contractor's Submittals, such as shop drawings, product data, samples and other submittals, shall apply to general design concepts only, and shall in no way relieve Contractor of its responsibility to notify the City of errors or omissions therein in accordance with Section 3.02, nor from providing all labor, equipment, and Materials in accordance with the requirements of the Contract Documents necessary for the proper execution of the Work. The City will complete such review, approval or other action promptly, provided that the City shall have a reasonable time to do so, as provided in the Specifications (Division 1). Costs incurred by Contractor and time required arising from the City's review of submittals are within the Contract Sum and Contract Time. Contractor shall be responsible for engineering or other costs necessary to prepare the submittals and obtain approvals required by the Contract Documents from the City or other authorities that have jurisdiction over the Work. The City is not precluded, by virtue of such approvals, from obtaining a credit for construction cost savings that result from allowed concessions in the Work or Materials that reduce the costs or quantities of the Work.

E. Access to the Work. During the performance of the Work, the SFMTA and its agents and employees may at any time enter upon the Site, the Work, the shops where any part of the Work may be in preparation, or the factories where any Materials for use in the Work are being or are to be manufactured, and Contractor shall provide proper and safe facilities for such visits, and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as the City's interests may require. Other contractors performing work for the City may also, for all purposes required by their respective Contracts, enter upon the Work.

2.02 INFORMATION AND SERVICES

The City's survey information, such as monuments, property lines, and reports describing physical characteristics, legal limitations and utility locations for the Site are available as Reference Documents. The City's responsibilities with respect to certain inspections, tests, and approvals are set forth in Article 8.

2.03 RIGHT TO STOP THE WORK

A. The City may for good cause order Contractor to suspend the Work, or a portion thereof, until the cause for such order has been eliminated. An order to suspend the Work shall be in writing and signed by the Engineer. Unless otherwise agreed by the City, the Contract Time will not be extended and the Contract Amount will not be adjusted as a result of an order to suspend the Work. Where practicable, the City will give Contractor such notice and time to cure the Engineer may determine is reasonable under the circumstances.

B. Good cause justifying the City's order to suspend the Work or any portion thereof, includes but is not limited to the following:

1. After receipt of notice from the Engineer to correct Work that does not meet Contract requirements, Contractor fails to correct said Work ; or
2. After receipt of notice from the Engineer to do so, Contractor fails to carry out Work in accordance with the Contract Documents; or;
3. After receipt of direction from the Engineer, Contractor disregards the authority of the Engineer or other authorized Agency representative; or
4. After receipt of notice from the Engineer to conform to the requirements of applicable Codes or orders of a public agency with jurisdiction over the Work, Contractor disregards the applicable Codes or orders of such agency; or
5. After receipt of notice to cure, Contractor violates in any substantive way (which determination shall be within the reasonable discretion of the Engineer) any provisions of the Contract Documents; or
6. Contractor fails to maintain required bond and insurance coverage and/or fails to maintain required documentation of such coverage on file with the City;
7. Contractor fails to enforce safe work practices or otherwise fails to maintain safety at the Site or Construction Area;
8. Public emergency, unsafe work conditions, or severe weather; or
9. Original Contract Work is proceeding but will be modified by a pending Change Order, which will result in waste if the Work is not stopped.
10. Contractor assigns unqualified personnel to the Work who the Engineer has determined lack the necessary skills and expertise to competently

perform the Work, and Contractor fails to reassign them from the Work when directed to do so by the Engineer.

C. The right of the City to suspend the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of Contractor or other person or entity.

D. If the Engineer orders a suspension of all Work or a portion of the Work that is a current critical operation because of unsuitable weather or such other conditions as are considered unfavorable to the proper performance of the Work and are entirely outside of Contractor's control, the delay caused by said suspension shall be considered Unavoidable Delay as defined in Section 7.02.H (Unavoidable Delays).

E. The City's suspension of Work shall not return control of the Site to the City or otherwise modify the City's delegation of control of the Site to Contractor, unless the City provides Contractor written notice explicitly stating that the City has assumed control of the Site.

F. An order to suspend the Work for any reason shall not relieve Contractor of its responsibilities under the Contract, which include maintaining control, security and safety at the Site and protecting the safety of persons and property on and adjacent to the Work. An order to stop the Work shall not under any circumstances affect the City's delegation to Contractor of control of the Site and control of safety and security on the Site, unless the City in writing expressly relieves Contractor of such responsibilities and delegated control. If the Engineer orders a suspension of Work due to Contractor's failure to observe safety rules or otherwise maintain Site safety, such delay shall not constitute an Unavoidable Delay and shall be charged against Contractor.

2.04 RIGHT TO CARRY OUT THE WORK

In the event that Contractor fails to carry out the Work in accordance with the Contract Documents and fails to promptly correct or prosecute the Work within a three-Day period following a written notice of a deficiency from the City, or other such period as may be specified elsewhere in the Contract Documents, the City may, without prejudice to other remedies the City may have, correct such deficiencies itself. In such case, the City will deduct all costs of such corrections, including the costs of City staff, consultants and other contractors, from amounts due Contractor. If funds remaining under the Contract are not sufficient to cover the costs of such corrections, Contractor shall reimburse the City the remaining amounts.

2.05 RIGHT TO CHANGE, SUSPEND OR DELAY THE WORK

By submitting its Bid and executing this Contract, Contractor agrees that the City shall have the right to do any or all the following, which are reasonable and within the contemplation of the parties: (a) order changes, additions, deletions and extras to the Work after execution of the Contract and issued from time to time throughout the period of construction, regardless of the scope, number, cumulative value or complexity of the changes, to correct errors, omissions, conflicts and ambiguities in the Contract Documents, or to implement discretionary changes to the scope of the Work; (b) issue changes, additions, deletions, and extras in a manner that is not in sequence with the as-built or as-planned progress of the Work; (c) issue changes due to Unforeseen or Differing Site Conditions; and (d) suspend the Work or parts thereof, or limit access to portions of or all of the Work, for the convenience of the City or in the interests of the Project or in the interest of public safety and preservation of the Work.

2.06 AUDIT

A. The City shall have the right to examine, copy and audit all documents (whether paper, electronic, or other media) and electronically stored information, including, but not limited to, any and all books, estimates, records, contracts, escrow bid documents, bid cost data and documents, equipment cost data and documents, schedules, subcontracts, job cost

records and reports, computations and projections and other data of Contractor, Subcontractors, Lower-Tier Subcontractors and Suppliers related to bidding, negotiating, pricing, or performing the Work covered by: (1) a Change Order Request; (2) Force Account Work; or (3) a Contract Claim or claim submitted under the California Government Code. In the event that Contractor is a joint venture, said right to examine, copy and audit shall apply collaterally and to the same extent to the records of the joint venture sponsor, and those of each individual joint venture member.

B. Upon written notice by the City, Contractor immediately shall make available at the Site Office or other location directed by the City, at all reasonable times, the Materials noted in the preceding Subsection 2.06(A) for examination, audit, or reproduction. Said notice shall be in writing, delivered by hand or by certified mail, and shall provide not less than five Days' notice of the examination and/or audit. The City may take possession of the records and materials noted in Subsection 2.06(A) by reproducing documents for off-Site review or audit. When requested in the City's written notice of examination and/or audit, Contractor shall provide the City with copies of electronic documents and electronically stored information in a usable format that will allow the City to readily access and analyze all such documents and information. For documents and information that require proprietary software to access and analyze, Contractor shall provide the City with two licenses with maintenance agreements authorizing the City to access and analyze all such documents and information.

C. The City has sole discretion as to the selection of an examiner or auditor and the scope of the examination or audit.

D. The City may exercise its audit rights under this Section 2.06 to examine, audit, or reproduce the Materials and records described in this Section from Award until three years after final payment to Contractor under this Contract.

E. Failure by Contractor to make available any of the records or materials noted in Subsection 2.06(A) or refusal to cooperate with a notice of audit shall be deemed a material breach of the Contract and grounds for Termination For Cause.

F. Contractor shall insert all of the provisions of this Section in all subcontracts of Subcontractors and Lower-Tier Subcontractors and Suppliers that provide labor, equipment or Materials for this Contract with a total value (that is, sum of all invoices) of more than \$5,000.

2.07 NO WAIVER OF RIGHTS

A. None of the following shall operate as a waiver of any provision of this Contract or of any power herein reserved by the City or any right of the City to damages herein provided:

1. Inspection by the City or its authorized agents or representatives; or
2. Any order or certificate for payment, or any payment for, or acceptance of the whole or any part of the Work by the City; or
3. Any extension of time; or
4. Any position taken by the City or its authorized agents or representatives.

2.08 OWNER'S BENEFICIAL USE

A. Whenever the Work, or any part thereof, is in a condition suitable for use in the opinion of the City, and the best interest of the City requires such use, by written order of the Engineer, the City may take possession of and use the Work, or a part thereof, at no additional cost to the City for the City's Beneficial Use. The City shall bear all maintenance and repair costs arising from ordinary wear and tear caused by the City's use of the Work or portion thereof. The City's Beneficial Use of the Work or part thereof shall in no case be construed as constituting completion or acceptance of Non-conforming Work. Unless otherwise provided elsewhere in the Contract Documents, such use shall neither relieve Contractor of any of its

responsibilities under the Contract, nor act as a waiver by the City of any of the conditions thereof.

Such Beneficial Use by the City may commence at any time as determined by the City, except that the insurers providing property insurance shall have acknowledged notice thereof and in writing effected any changes in insurance coverage necessitated thereby.

B. If Contractor believes that any part of the Work of which the City has taken possession for Beneficial Use has reached Substantial Completion, Contractor shall notify the City in writing and request a joint inspection of that part of the Work prior to submitting an application for payment and request for certificate of Substantial Completion. Refer to Section 7.01.D.

C. Beneficial Use of the Work shall not constitute acceptance of Non-conforming Work or Work that does not otherwise fully comply with the requirements of the Contract Documents.

D. Contractor shall perform final cleaning of such partially utilized Work as specified in the Technical Specifications (Division 1) when and as directed by the City.

2.09 SPECIAL DAMAGES

The City, its boards and commissions, and all of their officers, agents, members, employees, and authorized representatives shall have no liability to Contractor for any type of special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising under or related to the Work or this Contract or under any cause of action related to the subject matter of this Contract, whether in contract, tort (including negligence), strict liability, or otherwise. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension, cancellation or rescission of the Work or this Contract, negligence or strict liability by the City, its boards and commissions, and their representatives, consultants or agents.

ARTICLE 3 -- CONTRACTOR'S RESPONSIBILITIES

3.01 GENERAL REQUIREMENTS OF CONTRACT

A. Contractor shall furnish all labor, Materials, supplies and equipment, unless otherwise specified herein, and shall do all Work necessary for the performance and completion of the Work, all in accordance with these Contract Documents and to the satisfaction of the Agency. All work performed and costs incurred by Contractor that are necessary to, ancillary to or otherwise required for the completion of the Work and that reasonably could have been foreseen at the time the Contractor submitted its Bid shall be considered to be within the original scope of the Work and not Additional Work. All Work constructed or installed shall be complete and ready for operation and use within the Contract Time and for the Contract Sum.

B. The Total Bid Price shall include the entire cost of the Work contemplated in the Contract, including all Incidental Work. Any part of the Work not shown on the plans or described in the specifications but which is reasonably implied by either, or is necessary or usual in the performance of such Work, shall be performed by Contractor as Incidental Work without extra cost to the City, as if fully described in the Specifications and/or shown on the Plans and Drawings.

3.02 REVIEW OF CONTRACT DOCUMENTS AND SITE CONDITIONS

A. The Contract Documents are not complete in every detail but show the purpose and intent only, and Contractor shall comply with their true intent and meaning, taken as a whole, and Contractor shall not avail itself of any manifest error, omission, discrepancy or

ambiguity that may appear in the Contract Documents, instructions or work performed by others.

B. Contractor shall verify all dimensions and determine all existing conditions that may affect its Work adequately in advance of the Work to allow for resolution of questions without delaying said Work, and Contractor shall be responsible for the accuracy of such dimensions and determinations.

C. Contractor shall carefully review the appropriate portions of the Contract Documents a minimum of 30 Days in advance of the Item or other portion of Work to be executed for the express purposes of checking for any manifest errors, omissions, conflicts, discrepancies or ambiguities within the Contract Documents and with observable field conditions. Contractor shall not be entitled to any compensation for delays, disruptions, inefficiencies or additional administrative effort caused by Contractor's untimely or other failure to exercise due diligence in reviewing the Contract Documents and observable field conditions. Contractor shall immediately upon discovery seek clarification or correction from the Engineer of manifest errors, omissions, conflicts discrepancies or ambiguities in the Contract Documents before performing Work under such provision of the Contract Documents.

D. Any rule that would require that the General Provisions or Special Provisions to be construed against the drafter of those Provisions, including but not limited to California Civil Code section 1654, shall not apply to this Contract. Ambiguities in the Specifications or the Drawings shall be addressed under the RFI and Change Order processes set out in Article 6.

E. Contractor shall notify the City in writing promptly as specified in Article 6 upon discovery of errors, omissions, discrepancies or ambiguities, and the City will issue a Clarification or RFI Response as to the procedure to be followed. If Contractor proceeds with any such Work without receiving such Clarification or RFI Response, Contractor shall be responsible for correcting all resulting damage and Non-conforming Work.

F. Contractor shall be responsible for its costs and the costs of its Subcontractors to review Contract Documents and Site and field conditions and to implement and administer a Request for Information (RFI) system throughout the Contract Time in accordance with the requirements of these General Provisions and Specifications (Division 1). Contractor shall be responsible for costs incurred by the City for the work of the City's consultants and City's administrative efforts in answering Contractor's RFIs where the answer could reasonably be found by reviewing the Contract Documents or inspecting the Site.

3.03 SUPERVISION OF THE WORK

A. Unless there are specific provisions in the Contract Documents to the contrary (which provisions shall be limited to the specific scope or subject thereof), Contractor shall be solely responsible to fully and skillfully supervise and coordinate the Work and control the construction means, methods, techniques, sequences and procedures. Contractor shall be solely responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents and for the acts or omissions of Contractor, its Subcontractors, or their agents or employees, or of any other persons performing any portion of the Work.

B. Contractor is solely responsible for maintaining safe conditions on the Site at all times, in accordance with Article 12.

C. Contractor shall supervise and coordinate the Work of its Subcontractors so that information required by one will be furnished by others involved in time for incorporation of the information into the Work in the proper sequence and without delay of Materials, devices, or provisions for future Work.

D. Whenever the Work of a Subcontractor is dependent upon the work of other Subcontractors or contractors, then Contractor shall require the Subcontractor to:

1. Coordinate its Work with the dependent work;
2. Provide necessary dependent data, connections, miscellaneous items, and other transitional requirements;
3. Supply and install items to be built into dependent work of others;
4. Make provisions for dependent work of others;
5. Examine dependent drawings and specifications and submittals;
6. Examine previously placed dependent work;
7. Check and verify dependent dimensions of previously placed work;
8. Notify Contractor of previously placed dependent work or dependent dimensions which are unsatisfactory or will prevent a satisfactory installation of its Work; and
9. Not proceed with its Work until the unsatisfactory dependent conditions have been corrected.

E. Contractor shall immediately comply with and perform as directed orders and instructions including, but not limited to, Change Orders, RFI Responses and Clarifications given by the City in accordance with the terms of this Contract, but nothing therein shall be interpreted as a waiver of any obligation of Contractor or otherwise to relieve Contractor of any of its obligations or liabilities under this Contract, or of performing its required detailed direction and supervision, unless such direction is provided in a fully and properly executed Contract Modification.

F. Contractor shall at all times permit the City, its agents and authorized representatives to: (1) visit and inspect the Work and the Site; (2) inspect and test the Materials at the Site and/or at the place of manufacture and/or preparation; and (3) reject Work or Materials that do not conform to the requirements of the Contract Documents. This obligation of Contractor shall include maintaining proper facilities and safe access for such inspection. Where the Contract requires Work to be tested or inspected, it shall not be covered up before inspection and approval by the City as set forth in Article 8. The City's exercise of, or failure to exercise rights to inspect, test, or examine any Materials, equipment and Work, shall in no way relieve Contractor of its obligations under the Contract, and shall not be construed as constituting or implying acceptance by the Engineer.

G. Whenever Contractor desires to perform Work outside regular working hours, Contractor shall give notice to the City of such desire and request and obtain the City's written permission at least three Working Days in advance, or such other period as may be specified, except in the event of an emergency prior to performing such Work, so that the City may make the necessary arrangements for testing and inspection.

H. If Contractor receives a written notice from the City that a Clarification is forthcoming from the City, all Work performed before the receipt of the Clarification shall be coordinated with the City to minimize the effect of the Clarification on Work in progress, to maximize efficiency, and to avoid delay, repetition, or destruction of Work. All affected Work performed after receipt of the City's written notice but before receipt of the Clarification and not so coordinated shall be at Contractor's risk.

I. During all disputes or disagreements with the City, Contractor shall carry on the Work and adhere to the progress schedule as required by the Contract Documents. Contractor shall not delay or postpone performance of any portion of the Work pending resolution of any disputes or disagreements, except as the City and Contractor may otherwise agree in writing.

3.04 UNFORESEEN OR DIFFERING CONDITIONS

A. Consistent with California Public Contract Code section 7104, if any of the conditions listed in this Section are encountered at the Site, Contractor shall immediately upon discovery, and before such conditions are disturbed, notify the Engineer in writing of any:

1. Material that Contractor believes may be hazardous waste, as defined in California Health and Safety Code section 25117, which is required to be removed to a Class I, Class II, or Class III disposal Site in accordance with provisions of existing Law.
2. Subsurface or latent physical conditions at the Site that differ materially from the conditions indicated in Site information (including Reference Documents) made available to Bidders prior to the deadline for submitting bids.
3. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character or otherwise similar to the Work provided for in the Contract Documents.

B. Within 24 hours of discovery of any condition(s) listed in the preceding Subsection 3.04.A, Contractor shall provide written notice to the Engineer providing the following information concerning such differing Site condition(s): (1) location; (2) nature and extent; (3) anticipated impact the Work and the Project Schedule; (4) recommended methods to overcome such conditions; (5) reference to the baseline conditions as described in the Contract Documents that formed the basis of Contractor's expectations regarding the conditions to be encountered; and (6) the results of any testing, sampling or other investigation conducted by Contractor.

C. Differing Conditions shall not include:

1. All that is indicated in or may reasonably interpreted or inferred from the Contract Documents or Reference Documents;
2. All that could be seen on Site by diligent observation;
3. Conditions that are materially similar or characteristically the same as those indicated or described in the Contract Documents or Reference Documents.
4. Conditions where the location of a building component is in proximity to the location indicated in or reasonably interpreted from the Contract Documents or Reference Documents.

D. The City will promptly investigate the conditions reported in Contractor's written notice, and will issue a written report of findings to Contractor.

E. Contractor shall remain responsible for the safety, security, and protection of the Site and affected area of the Work for the duration of the City's investigation of potential Differing Conditions.

F. As provided in Public Contract Code section 7104 and the process set forth therein, the City will grant a Change Order if the City determines, in its sole discretion, that the conditions reported do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost or time to perform all or part of the Work; the City will grant such Change Order if granted at all, only as provided in Article 6 of these General Provisions, and/or as a Contract Time extension as provided in Article 7 of these General Provisions, as appropriate. If the City determines that a differing condition exists, Contractor shall promptly submit a Change Order Request, as required by Article 6 of this Contract.

G. Should Contractor disagree with the City's determination and wishes to pursue an adjustment to Contract Time or Contract Sum, Contractor shall timely submit a written Notice of Potential Claim to the City as provided in Section 13.03 of these General Provisions. Contractor shall in such Notice of Potential Claim include the information required under Section 13.03 and must also identify the Escrow Bid Documents that form the basis of Contractor's Bid to perform the Work affected by the Differing Condition. In the event of such disagreement, Contractor shall proceed with all Work to be performed under the Contract Documents, and shall not be excused from any scheduled completion date provided for by the Contract Documents.

H. Failure by Contractor to comply with the requirements of this Section concerning the timing and content of any notice of unforeseen or differing site conditions or of any request for adjustment of the Contract Sum and/or Contract Time based on alleged unforeseen or differing site conditions shall be deemed a waiver of any Contract Claim or subsequent proceedings (e.g., Government Code Claims and litigation) by Contractor for adjustments to the Contract Sum or Contract Time arising from or relating to such conditions.

3.05 CONTRACTOR'S ORGANIZATION

A. **Contractor's Legal Address.** The address given in Contractor's bid or Proposal is hereby designated as the legal address of Contractor, but such address may be changed at any time by notice in writing, delivered to SFMTA. The delivering to such legal address or the depositing in any post office or post office box regularly maintained by the United States Postal Service, in a prepaid wrapper, directed to Contractor at such address, of any drawing, notice, letter or other communication, shall be deemed legal and sufficient service thereof upon Contractor.

B. **Contractor's Office at the Site.** Contractor shall maintain an office at the site of the Work, which office shall be headquarters of a representative authorized to receive instructions, drawings or other communications from the Engineer. Such instructions, drawings, or other communications given to such representative or delivered at their office in their absence shall be deemed to have been given to Contractor.

C. **Contractor's Key Personnel, Superintendents and Foremen.**

1. Contractor shall at all times be represented at the Site by one or more Contractor Key Personnel (superintendents and/or foremen) who are competent and who Contractor has been authorized in writing to make decisions and receive and carry out any instructions from the City. Contractor will be held responsible for the faithful compliance with such instructions.
2. Prior to the issuance of Notice to Proceed, Contractor shall inform the City in writing of the names, addresses and telephone numbers of its Key Personnel whom it has authorized to act as its representatives at the Site and who are to be contacted in case of emergencies at the Site during non-working hours, including Saturdays, Sundays and holidays. If Contractor is a joint venture, its designated representative shall represent and receive notice and instructions on behalf of the joint venture and all of its constituent members.
3. The City reserves the right to reject Contractor's project manager, general construction superintendents, project coordinators, foremen or other Key Personnel at any time for cause. The City shall be given written notice of and proof of qualifications of any replacement Key Personnel, and the City shall have the right to approve or reject the replacement of Contractor's project manager, superintendents and foremen, and other such Key

Personnel. Any proposed substitution is subject to the approval of the City based upon qualifying experience on similar projects as set forth in the Bid Documents for the Work. Contractor's failure to obtain City approval of replacement Key Personnel shall not constitute cause for delay. In addition, the City may issue an order to suspend the Work under Section 2.03 until such time as Contractor engages replacement Key Personnel possessing skills and qualifications acceptable to the City.

4. Contractor shall not assign Key Personnel significant responsibility for other projects without first obtaining the Engineer's approval in writing. Contractor agrees that the primary responsibility of Key Personnel shall be the Work under this Contract. Key Personnel shall be available as the Work may require. But Contractor is expected to utilize Key Personnel efficiently so that if the services or resources of Key Personnel are not required due to the status of the Work (including but not limited to delay, resequencing or suspension of the Work), Contractor shall make every effort to assign said Key Personnel to other projects to avoid Key Personnel remaining idle, and to mitigate and resulting costs or damages.

3.06 LABOR, MATERIALS AND EQUIPMENT

A. Contractor shall at all times keep on the premises a sufficient amount of Materials and employ a sufficient number of workers to perform the Work at a rate necessary to complete the Work within the Contract Time. Should Contractor at any time during its performance of the Work refuse, neglect, or be unable to supply sufficient Materials or labor to perform the Work at such necessary rate, then upon receipt of notice to that effect from the Engineer, the Engineer may notify Contractor to furnish such workers or Materials as the Engineer may consider necessary, and if Contractor does not comply within three Days of the date of service of such notice, the SFMTA may in its discretion finish said Work at Contractor's sole expense. The costs incurred by the City in such circumstances shall be deducted from any moneys due or which may thereafter become due to Contractor under the Contract, and the City may pay said funds to persons performing the work or supplying the Materials. The amount of any such payments shall be deducted from the fund or appropriation set aside for the purposes of this Contract and charged to Contractor as if paid to it.

B. Contractor shall employ only competent and skillful persons to perform the Work, and shall at all times maintain good discipline and order at the Site. Upon the City's notification, Contractor shall discharge from the Work and replace at no additional cost to the City any employee, Subcontractor or Supplier used on the Work who, in the City's sole judgment is: incompetent, unfaithful, obnoxious, or disorderly, or who refuses to carry out the provisions of the Contract, uses threatening or abusive language or actions to any person, displays either by word or action a level of prejudice or insensitivity to the cultural and/or ethnic background of his or her co-workers or persons in the community, or is otherwise unsatisfactory.

C. In order that the City can determine whether Contractor has complied or is complying with the requirements of the Contract that are not readily enforceable by inspection and test of the Work and Materials, Contractor shall upon request submit properly authenticated documents or other satisfactory proof of its compliance with such requirements.

D. Before ordering Materials, equipment, or performing Work, Contractor shall verify indicated dimensions in a timely fashion by inspecting the Site and taking field measurements required for the proper fabrication and installation of the Work as specified in Section 3.02. If a discrepancy exists, Contractor shall notify the City immediately and request the City to clarify the intended design. Upon commencement of a particular Item or other portion of the Work, Contractor shall be responsible for dimensions related to such Item or portion of the Work.

E. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all Materials, equipment, labor, transportation, construction equipment, machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, field offices, storage facilities and incidentals necessary for the performance, testing, start-up and completion of the Work in accordance with the Technical Specifications (Division 1).

F. In the event that the Technical Specifications (Division 1) do not require that Contractor provide a field office for the Engineer with sanitary facilities, Contractor shall provide adequate separate sanitary facilities at the Site for the Engineer.

G. Contractor shall provide at convenient points ample water supply of satisfactory quality for all operations required under this Contract.

H. No Materials used or article furnished under this Contract shall have been made in a prison or by convict labor

I. All Materials and equipment shall be delivered, handled, stored, installed, and protected to prevent damage in accordance with best current practice in the industry, in accordance with manufacturers' specifications and recommendations, and in accordance with the requirements of the Contract Documents. Contractor shall store packaged materials and equipment to the Site in their original and sealed containers, marked with the brand and manufacturer's name, until ready for use. Contractor shall deliver materials and equipment in ample time to facilitate inspection and tests prior to installation.

J. Construction Plant, Equipment and Methods.

1. The construction plant and equipment provided by Contractor, and its methods and organization for handling the Work, shall be such as will secure a satisfactory quality of Work and rate of progress which, in the opinion of the Engineer, will ensure the completion of the Work within the Contract Time or other specified period.
2. Contractor shall give the Engineer full information in advance as to Contractor's plan for carrying on any part of the Work. If at any time before the commencement or during the progress of the Work, any part of Contractor's plant or equipment, or any of its methods of executing the Work, appears to the Engineer to be unsafe or inadequate to insure the required quality or rate of progress of the Work, the Engineer may order Contractor to increase or improve or otherwise amend Contractor's facilities or methods, and Contractor shall promptly comply with such orders; but neither compliance with such orders nor failure of the Engineer to issue such orders shall relieve Contractor from its obligation to secure the degree of safety, the quality of the Work and the rate of progress required by the Contract. Contractor alone shall be responsible for the safety and adequacy of plant, equipment and means and methods of performing the Work.

3.07 PERMITS, FEES, NOTICES, AND CODE REQUIREMENTS

A. Contractor shall pay all utility charges for temporary connections to the Work.

B. Unless specifically otherwise required in the Special Provisions or other Contract Documents, Contractor shall obtain and pay for any building permits, sidewalk encroachment and street occupation permits, and other permits and licenses, pay all charges and governmental fees (other than permanent utility service connection fees), licenses, and inspections (other than Special Inspections which are to be performed at the expense of the City as provided in Article 8) necessary for the proper execution and completion of the Work.

The City will reimburse Contractor for reasonable costs incurred for obtaining any additional permits that the Engineer directs Contractor to procure, which are not specified in the Contract Documents to be obtained at Contractor's expense.

C. Contractor shall give all notices required by applicable Codes, laws, ordinances, rules, regulations and lawful orders of public authorities that relate to performance of the Work, including but not limited to notices required under California Civil Code Section 832.

D. Contractor shall secure all permits and pay all applicable permit fees prior to performing excavation in the public right of way. Contractor shall timely deliver, post and maintain all notices required by such permits. Contractor shall be solely responsible for coordinating and performing its excavation and street restoration operations in accordance with the conditions of such excavation permits and applicable regulations, including, but not limited to, the codes and regulations referenced in the Blue Book. Should delays or damages be caused by Contractor's failure to coordinate or comply with the conditions of such excavation permits, Contractor shall pay all costs, assessments, fines, and penalties resulting therefrom.

E. If Contractor observes that portions of the Contract Documents are at variance with any Code or other applicable laws, statutes, ordinances, rules and regulations, Contractor shall promptly notify the City in writing. If the City determines that changes to the Contract Documents are necessary to comply with any Codes, laws, statutes, ordinances, rules or regulations, the City will make necessary changes to the Contract Documents by appropriate Contract modification.

F. If Contractor performs Work it knows, or reasonably should have known, to be contrary to an applicable Code or other applicable laws, statutes, ordinances, and rules and regulations without written notice to the City, Contractor shall assume responsibility for such Work and shall bear all costs of correction.

G. Contractor shall keep all permits, an approved set of Drawings and Specifications, and a copy of applicable Codes at the Site Office readily available for inspection during regular working hours throughout its performance of the Work.

H. Contractor shall coordinate all required inspections and special inspections with the appropriate agency having jurisdiction. Contractor shall notify the Engineer in accordance with Section 8.02.B so that the Engineer, other appropriate City staff and outside agency inspectors will be present at these inspections.

I. Contractor shall be responsible for preparing and submitting for approval to the appropriate agency having jurisdiction all shop drawings, product data, and manufacturer's certificates as may be required under the conditions of applicable permits.

J. Contractor shall submit to the Engineer as a condition precedent to Final Acceptance signed permit documents including, but not limited to, job cards, permit applications, permit Drawings, and certificates of occupancy.

3.08 RECORD DOCUMENTS

A. Contractor shall maintain at the Site Office a current record copy of all Contract Documents including, but not limited to, Drawings, Specifications, Addenda, Change Orders, RFIs, Clarifications, and approved shop drawings, samples and other submittals, in good order and clearly marked to record accurately the Work as actually constructed ("as-built"), including changes, adjustments, and other information relative to the Work as actually constructed, all in accordance with the Specifications (collectively "Record Documents"). Additionally, said Record Documents shall conform to the requirements specified in Technical Specifications (Division 1).

B. Upon request by the Engineer and no less often than monthly, Contractor shall make available Record Documents for the City to review and determine their sufficiency in

conforming to the requirements set forth in Subsection 3.08.A. The City shall have the right to withhold 25 percent of progress payments due Contractor until Contractor has complied with Subsection 3.08.A.

C. Record documents shall be available for inspection by the City at all times and shall be delivered to the City prior to and as a condition precedent for determination of Substantial Completion.

3.09 CONTRACTOR'S DAILY REPORT

A. Each Day that it performs Work, Contractor shall complete, and submit to the City on the following Day Work is performed, consecutively numbered daily construction reports in accordance with Technical Specifications (Division 1). In addition, when performing Force Account Work, Contractor shall complete and submit to the City detailed written daily Force Account Work reports as provided under Section 6.05.B.

3.10 COST DATA

A. Contractor shall give the Engineer, at his/her request at any time, full and correct information as to the number of persons employed in connection with each subdivision and task of the Work, the classification and rate of pay of each person, the cost to Contractor of each class of Materials, General Equipment, Specialized Equipment, tools and appliances used by Contractor in the Work, and the amount of each class of Materials used in each subdivision of the Work.

3.11 PROGRESS AND SUBMITTAL SCHEDULES

A. At the Pre-Construction Conference, Contractor shall submit to the City for review a 120-Day Plan of Operation.

B. In accordance with Division 1, Contractor shall submit to the City for review the following schedules:

1. A cost-loaded Baseline Schedule for the Work which shall use, unless otherwise specified in Technical Specifications (Division 1), the critical path method (CPM) and shall indicate the times (number of Days or dates) for starting and completing the various stages of the Work, including all Milestones and special constraints specified in the Contract Documents, unless other scheduling requirements are provided in Technical Specifications (Division 1) or the Special Provisions; and
2. A submittal log, coordinated with the progress schedule in accordance with the requirements of Technical Specifications (Division 1), listing all submittals required by the Contract, applicable Specifications, and submittal due dates.

C. Unless specified elsewhere in the Contract Documents, within ten Days after submittal, the City and Contractor shall meet to review for acceptability to the City the submitted Baseline Schedules and other materials required under Section 3.11.B. Contractor shall have an additional five Working Days to make corrections and adjustments and to complete and resubmit the schedule.

D. No progress payments will be made to Contractor unless and until the Baseline Schedule is submitted and accepted by the City.

E. Contractor shall adhere to the Baseline Schedule accepted by the City in accordance with Subsection 3.11.B. The Baseline Schedule may be adjusted during the performance of the Work, in accordance with the Contract Documents. Contractor shall submit to the City for acceptance proposed revisions or adjustments in the Baseline Schedule.

Proposed adjustments in the Baseline Schedule that will change the Contract Time shall be submitted to the City as a Change Order Request in accordance with Sections 6.02 and 7.02.

F. The City's approval of Contractor's Baseline Schedule and Submittal Schedule shall not relieve Contractor of its sole responsibility for the sequencing, scheduling, performance or rate of progress of the Work, shall not impose liability on the City for those aspects of the Work, and shall not directly or indirectly effect a waiver of any City right under the Contract.

G. Contractor shall submit a monthly progress schedule update (as an update to the Baseline Schedule) as a condition precedent to making an Application for Payment as set forth in Article 9 and Technical Specifications (Division 1). All updates shall be submitted to the City for the City's acceptance; if rejected, Contractor shall correct and resubmit updates to the satisfaction of the City before a pending application for payment is approved.

1. Each progress schedule update shall show all Work activities including those already completed and those of changed Work from the update of the previous month.
2. Each progress schedule update shall accurately reflect "as-built" information by accurately indicating the dates Contractor started and completed activities and Items, and the actual status (percentage of completion) of all activities and Items of Work.
3. Contractor's submission of progress schedule updates, reports, curves or narratives, and the City's approval of such progress schedule updates, reports, curves or narratives, shall not amend or modify, in any way, the Contract Time or Milestone dates or otherwise modify or limit, in any way, Contractor's obligations under this Contract.
4. Contractor waives any claim to extension of Contract Time based on changed Work, if Contractor has failed to meet its obligations to provide monthly schedule updates as specified herein.

H. If Contractor submits an approved Baseline Schedule that shows a completion time that is earlier than the Contract Time stated in the Special Provisions ("Early Completion Date"), the resulting "float time" shall belong to the Project (that is, to either the City or the Contractor) when and as each may require until it is exhausted. Contractor shall not be entitled to a compensable extension of Contract Time for any Change Order or Unilateral Contract Modification that causes an approved Early Completion date to be extended within the "float time".

I. Claim for Delay to Early Completion. The City shall not be liable for, and Contractor shall not claim, any delay to completion of the Work based on a planned, expected or anticipated completion date that is not stated in the Contract. Contractor shall not base any claim on a unilateral or unapproved schedule or other planned means and methods for performing the Work that anticipate a date of Substantial Completion or Final Completion of the Work prior to the expiration of the Contract Time stated in the Contract (that is, Early Completion). The Contract Time can only be shortened to provide a date for Substantial Completion or Final Completion earlier than the date(s) stated in the Contract (Special Provisions) by a properly approved Contract Modification. In the absence of a properly executed Contract Modification stating a Substantial Completion or Final Completion date earlier than that stated in the Contract when awarded, any delay to Contractor's expected, anticipated or planned Early Completion of the Work or any portion of the Work is not compensable.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

A. Contractor shall not perform any portion of the Work that requires City review of shop drawings, product data, samples or other submittals until the City has reviewed and approved the submittal and returned it to Contractor. Work shall conform to submittals approved by the City. Contractor is solely responsible for delays or disruptions to the Work caused by inadequate, uncoordinated, incorrect or late submittals.

B. Shop drawings, product data and samples shall be furnished to the Engineer for approval, and any Work for which submittals are required that Contractor executes before receipt of City approval, shall be at Contractor's risk.

C. The review and approval of said submittals by the Engineer or City design consultants will refer to general design only, and will not relieve Contractor from responsibility for errors contained therein, or from the necessity of furnishing such Work and Materials as may be required by the plans and Technical Specifications, or otherwise necessary for the proper execution of the Work intended, whether or not indicated on the submittals when approved.

D. Shop drawings, product data, samples and similar submittals are not Contract Documents. The purpose of a submittal is to demonstrate (for those portions of the Work for which submittals are required) the manner (i.e., means and methods) that Contractor proposes to perform the Work to conform to the information given and the design concept expressed in the Contract Documents. Review or approval of Contractor's submittals by the City is subject to the requirements stated in Section 2.01.D.

E. Contractor shall review, approve, stamp, and submit to the City as specified in Technical Specifications (Division 1) all shop drawings, product data, samples and similar submittals required by the Contract Documents in accordance with the accepted submittal schedule. Submittals made by Contractor that are not required by the Contract Documents may be returned without action.

F. By approving and submitting shop drawings, product data, samples and other submittals, Contractor represents that it has determined and verified Materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals for conformance to the Contract Documents and for coordination of the Work indicated in the submittal and with adjacent work.

G. Where a shop drawing or sample is required by the Contract documents, related Work performed prior to the City's review and approval of the pertinent submittal shall be at the sole expense, risk and responsibility of Contractor.

H. Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's approval of shop drawings, product data, samples and other submittals unless Contractor has specifically informed the City in writing, attached to the submittal, of such deviation at the time of submittal and the City has given written approval to the specific deviation.

1. Deviations shall also be indicated clearly and boldly on such shop drawing, product data, sample or related submittal.
2. For resubmitted shop drawings, product data, samples and other submittals, Contractor shall direct specific attention, by written attachment, to revisions other than those requested by the City on previous submittals.

I. Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the City's approval thereof.

3.13 MATERIALS HANDLING

All Materials and equipment shall be delivered, handled, stored, installed, and protected to prevent damage in accordance with best current practice in the industry, in accordance with manufacturers' specifications and recommendations, and in accordance with the requirements of the Contract Documents. Contractor shall store packaged Materials and equipment whether at or off the Site in their original and sealed containers, marked to identify the Item, its brand and manufacturer, until the Item is ready for use. Contractor shall deliver Materials and equipment in ample time to facilitate inspection and tests prior to installation. Materials shall be so stored as to ensure the preservation of their quality and fitness for the Work. When considered necessary by the Engineer, they shall be placed on wooden platforms or other hard, clean surfaces and not on the ground. They shall be placed under cover when necessary to protect them from dirt, dust, wet, or corrosion, or as directed by the Engineer. Stored Materials shall be so located as to facilitate prompt inspection. Unless specifically authorized as a compensable expense, Contractor may at its own expense store Materials off of the Site. Contractor shall ensure that Materials stored off the Site are covered at all times under applicable insurance for loss and damage. Contractor shall be solely responsible for replacement of lost, stolen or damaged Materials that are not covered under Builder's Risk or other insurance.

3.14 SUBSTITUTIONS

A. Whenever in the Technical Specifications, any article, material or process is designated by patent or proprietary name or by name of manufacturer, such designation shall be deemed to be used for the purpose of facilitating description of the material and process desired, and shall be deemed to be followed by the words "or equivalent," and Contractor may offer any substitute material or process which it considers equal in every respect to that so designated, and if the material, or process, offered by Contractor is, in the opinion of the Engineer, equal in every respect to that so designated, its use will be approved.

B. Consistent with California Public Contract Code section 3400 and as specified in Technical Specifications (Division 1), as early as practicable, but no more than 60 Days from the Effective Date, Contractor shall submit to the Engineer a completed Request for Substitution listing all Materials and equipment that Contractor proposes to furnish or use as an equal to any that are designated by proprietary names or proprietary descriptions. Contractor shall furnish such detailed information in regard to each proposed substitute in time to permit the City's proper investigation without delay to the Work. Such information shall include descriptive matter, Drawings, catalogue references, cuts, samples, results of tests, and other appropriate matter such as will enable the Engineer to determine to his/her satisfaction whether the substitute is acceptable. No approval of such a substitution shall be valid unless given in writing and signed by the Engineer. Costs incurred by Contractor for Work performed and Materials procured for the substitution prior to the Engineer's approval of the substitution shall be at Contractor's risk. Failure to submit said Request for Substitution form within the period specified will be deemed adequate and reasonable grounds for the City to refuse any subsequent proposed substitutions.

3.15 USE OF SITE

A. **Site Boundaries.** Contractor shall confine its operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents. Contractor shall not unreasonably encumber the Site or the Construction Area with Materials or equipment. Notwithstanding the designation of Contract limits or the indication of temporary fences or barricades, the provisions of the Contract Documents governing certain portions or phases of the Work may require that certain operations be carried out beyond such designated limits. In all cases, the Work shall be constructed solely within the locations and boundaries described in the Contract Documents. Contractor shall coordinate with the City to obtain in advance of said operations all necessary permits, rights-of-way, or easements, and shall give proper notice

thereof to owners of affected properties in accordance with California Civil Code section 832. Contractor shall obtain all such permits, rights-of-way and easements at no cost to the City.

B. Water Removal. Pumping, draining and control of surface and ground water and excavating or other earthwork and other dewatering activities shall be carried out so as to avoid endangering the Work or adjacent facility or property, or interrupting, restricting or otherwise infringing or interfering with the use thereof. Contractor shall conform to all applicable Codes, laws and regulations and shall obtain all permits necessary to perform grading or excavation or dispose of surface or ground water or excavated Materials at the Site.

C. Loading. Contractor shall not load nor permit any part of any structure to be loaded in a manner that will endanger the structure, nor shall Contractor subject part of the Work or adjacent property to stresses or pressures that will endanger it. Contractor shall ensure that trucks delivering or removing Materials, equipment or debris to and from the Site comply with all applicable weight and traffic restrictions.

D. Damage Claims. Contractor shall assume full responsibility and shall promptly settle all claims for damage persons and property resulting from the performance of the Work within the Site and Construction Area and to adjoining areas or the owners or occupants thereof.

E. Temporary Structures. Contractor shall erect at its own expense, and remove upon the completion of the Work or as ordered by the Engineer, such temporary storage sheds, office and other temporary facilities as are necessary for the Work. The location and size of such facilities are subject to the Engineer's approval.

F. Cooperation with Other Contractors. Contractor shall cooperate with all other contractors and workers who may be employed by the City on any work in the vicinity of the Work to be done under this Contract, and it shall so conduct its operations as not to interfere with the work of such contractors or workers. Contractor shall promptly make good, at its own expense, any injury or damage that may be sustained by the work of other contractors or employees of the City by its interference or failure to cooperate with such other contractors or employees of City. Any difference or conflict that may arise between Contractor and other contractors or between Contractor and the workers of the City in regard to their work shall be adjusted and determined by the Engineer. Contractor shall suspend any part of the Work or shall carry on the same in such manner as may be prescribed by the Engineer, when such suspension or performance is necessary to facilitate the work of other contractors or workers.

G. Sanitary Rules.

1. All portions of the Work and the Site shall be maintained at all times in neat, clean and sanitary condition.
2. Toilets shall be furnished by Contractor for the use of employees on the Work, and their use shall be strictly enforced. All toilets shall have facilities for hand washing. They shall be properly secluded from public observation, and shall be located, constructed and maintained subject to the approval of the Engineer.
3. Contractor shall strictly obey and enforce all regulations of legally constituted public authority and all regulations prescribed by the Engineer in regard to sanitation, and shall summarily dismiss, and not again engage, except with the consent of the Engineer, any employees willfully violating sanitary regulations.

H. Utilities. Contractor shall conduct operations so as to avoid possible interruptions of sewer, water, gas, electric or other utility service to the adjacent residents or property owners. If the Contract requires such services to be interrupted, Contractor shall

make all necessary arrangements prior to such interruption as will ensure the least inconvenience to the residents and prompt restoration of service, all in accordance with such conditions as may be prescribed by the proper authorities or the Engineer. It shall be the sole responsibility of Contractor to determine the exact location of any sewer, water, gas, electric, or other utility. If any such utility becomes damaged due to any operation of Contractor, it shall be immediately repaired at Contractor's expense. Should Contractor, in the opinion of the Engineer, fail to comply with any of such requirements as herein stipulated, the Engineer may cause the necessary Work to be done, and the cost thereof shall be chargeable to, and shall be paid by, Contractor.

I. **First Aid.** At its own expense, Contractor shall provide approved "First Aid" cabinets close to all points where persons are at work, or wherever directed, and keep such cabinets stocked with the proper dressings, antiseptics, and other necessary medical provisions, and shall promptly transport sick or injured employees from the Site to points at which they may receive proper care.

J. **Use of Roadways and Walkways.** Contractor shall not unnecessarily interfere with the use of any roadway, walkway or other facility for vehicular or pedestrian traffic, by any party entitled to use it. Wherever such interference becomes necessary and no satisfactory detour route exists, Contractor shall, before beginning the interference, provide a satisfactory detour, temporary bridge, or other proper facility for traffic to pass around or over the interference, and shall maintain it in satisfactory condition as long as the interference continues, all without direct payment unless otherwise expressly stipulated in the Special Provisions.

K. **Preconstruction Documentation.** Contractor shall videotape and photograph the Site and Construction Area prior to commencement of Work, at least across city roads and property to record and document the existing conditions.

L. **Parking.** Construction Materials, equipment, and contractors' vehicles shall not be parked on the street except those actively involved in the construction to be performed on that day.

M. **Tree Pruning.** All tree pruning shall be carried out by a company having in full time employment an Arborist certified by the Western Chapter, International Society of Arboriculturists.

3.16 ACCESS TO WORK

A. During the performance of the Work, the City and its authorized representatives or other persons deemed necessary by any of them acting within the scope of the duties entrusted to them (including but not limited to construction management personnel and design consultants), may at any time, and for any purpose, enter upon the Work, the shops where any part of such Work may be in preparation, the facilities where any part of the Work may be in storage, or the factories where any Materials for use in the Work are being, or are to be, manufactured. Contractor shall not require City personnel or City consultants performing necessary project-related functions on behalf of the City to sign visitor hold harmless agreements or similar agreements requiring the signatory to defend, hold harmless and/or indemnify Contractor for claims arising out of or relating to the Work, the Project, or the Site, and such agreements if signed shall be void and of not enforceable.

B. Whenever required by the Engineer, Contractor shall furnish all tools, labor and Materials necessary to make an examination or tests of any Work under this Contract that may be completed or in progress, even to the extent of uncovering or taking down portions of finished Work. Should such Work be found or have previously been found to be unsatisfactory or should Contractor not have given the Engineer proper access or notice that the Work was ready for inspection, the cost of making such re-examination or re-test and or reconstruction

shall be borne by Contractor. Otherwise, the examination or tests will be paid for by SFMTA in the manner herein prescribed for paying for alterations, modifications and Additional Work.

3.17 CUTTING AND PATCHING

A. Contractor shall be responsible for performing, in accordance with the requirements of the Technical Specifications, all cutting, fitting, and patching of the Work that may be required to make all parts fit together or to receive the work of other contractors shown on, or reasonably implied by, the Contract Documents for the completed Work.

B. Contractor shall not damage or endanger a portion of the Work, or fully or other partially completed construction of the City or separate contractors, by excavation or by cutting, patching or otherwise altering such construction. Contractor shall not cut or otherwise alter such construction by the City or a separate contractor except with written consent of the City. Contractor shall not withhold its consent for the City to cut or otherwise alter the Work.

C. As more specifically described in the Specifications, Contractor shall confer, consult and cooperate with any contractor that performs follow-on work, that builds upon, or integrates with the Work performed by Contractor under this Contract, so that the contractor performing such follow-on work may understand the means, methods, approach of Contractor, and so that the follow-on contractor can devise the best means of preserving, avoiding damage to and/or integrating with Contractor's Work.

3.18 ILLUMINATION OF WORK

When any Work is performed at night or where daylight is shut off or obscured, Contractor shall provide artificial light sufficient to prosecute the Work properly and to permit thorough inspection.

3.19 CLEANING UP AND REMOVING DEBRIS

A. Contractor shall keep the Site and the Construction Area, including public areas adjacent to the Site, roadways, temporary pedestrian walkways and sidewalks, in a neat and clean condition, free from accumulation of excess materials, rubbish, graffiti, and debris. Contractor shall dispose of dirt, construction debris, garbage, and excavated materials in a satisfactory and lawful manner, as directed by the Engineer and as required by the Specifications, so that there shall at no time be any unsightly or obnoxious accumulation of dirt or debris at the Site or surrounding area.

1. On the completion of any portion of the Work, at Substantial Completion, and as a condition of Final Acceptance, Contractor shall: (1) promptly remove all equipment, temporary structures and surplus construction materials not to be used at or near the same location in the later performance of other portions of the Work; (2) properly dispose of all debris resulting from the Work; and, (3) shall perform final cleaning as specified in accordance with the requirements of the Specifications to leave the Site in a neat and clean condition satisfactory to the Engineer.
2. Contractor's removal and disposal of such excess Materials, garbage, excavated Materials, and other debris shall conform to requirements of the Contract and applicable Codes, laws and regulations.

B. If Contractor fails to comply with the requirements of this Section or to clean up as otherwise provided in the Contract Documents, the City may do so and deduct the cost of such cleanup from the amount due Contractor under the Contract.

C. Contractor shall sort and segregate construction debris and garbage for recycling as required by the San Francisco Environment Code and the Specifications.

D. As more specifically provided in the Technical Specifications, Contractor shall salvage and deliver to the City removed equipment, appurtenances and other Materials that are not reused in the Work and indicated by the Engineer to be salvaged. Contractor shall remove from the Site as its property and dispose of in a legal manner all other equipment, appurtenances and other Materials to be removed and not indicated to be salvaged or otherwise claimed by the City.

3.20 DELEGATION OF CONTROL OF THE SITE; PROTECTION OF WORK, PERSONS AND PROPERTY AGAINST DAMAGE

A. The City delegates and Contractor accepts such delegation of the control of the Site and responsibility for the safety of persons and property on and adjacent to the Site, commencing at NTP and continuing to Final Acceptance, unless the City earlier relieves Contractor of that delegation by written notice as provided in this Contract. To the maximum extent allowed by law, and except to the extent that any of loss, injury or damage is due to the City's sole negligence or intentional wrongful acts, Contractor shall be solely liable for any loss, injury or damage caused by or arising from the Work. See also Section 3.24 (Indemnification). Contractor may only be relieved of its responsibility for safety or persons and property affected by the Work on the express written order of the Engineer. A directive of the Engineer, City safety consultant, or regulatory enforcement agency concerning Site safety, unsafe conditions, or compliance with safety orders and Codes shall not alter Contractor's responsibility for the Site and shall not relieve Contractor of its responsibility for the safety of persons and property affected by the Work.

B. Commencing at NTP, Contractor shall protect the Work and Materials from damage due to the nature of the Work, the action of the elements, the carelessness of other contractors, or any other cause whatsoever, until the completion and the City's Final Acceptance of the Work. Should any damage to the Work or Materials occur, Contractor shall repair the damage at its own expense to the satisfaction of the Engineer. Neither the City nor any of its agents shall be responsible or have any obligation to seek indemnity or collect damages or other restitution from any person or persons that caused damage to the Work or the Materials.

C. Contractor shall bear all responsibility for damage to adjoining work, property, or structures, and for injury to its employees and to any other persons whatever, or to livestock, arising from or in consequence of the performance of this Contract, and Contractor shall furnish guards, fences, warning signs, walks and lights and take all other necessary precautions to prevent such damage or injury. All safety orders, rules and recommendations of the Division of Industrial Safety of California applicable to the Work shall be obeyed and enforced by Contractor.

D. As much of the moneys due and retained by the City under this Contract as may be considered necessary by the Engineer may, at his or her option, remain unpaid until all suits or claims for damages as described above shall have been settled and satisfactory evidence to that effect furnished.

3.21 INTELLECTUAL PROPERTY; ROYALTIES AND PATENTS

A. Contractor shall be responsible at all times for compliance with applicable patents, copyrights, trademarks, and/or other intellectual property rights held by others encompassing, in whole or in part, any invention, design, process, product, device, equipment, software, tools, Material, article or arrangement used, directly or indirectly, in the performance of the Work or incorporated into the Work.

B. Contractor shall pay, and include in the Contract Sum, all royalties and license fees and assume all costs incident to the use in the performance of the Work or the incorporation into the Work of any invention, design, process, product, device, equipment,

software, tools, Material, article or arrangement that is the subject of a patent right, copyright, trademark, and/or other intellectual property right held by others.

C. To the fullest extent permitted by law, Contractor shall save, defend, hold harmless, and fully indemnify the City (and all its officers and employees connected with the Project, other parties designated as Indemnitees, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them) from all damages, claims for damage, costs, or expenses in law or equity, including attorney's fees and costs, that may at any time arise or be set up for any infringement or unauthorized use of any patent right, copyright, trademark, trade name, service mark, trade secret, or other intellectual property or other proprietary right claims by any person in consequence of the use by the City, or any of its officers, agents, members, employees, authorized representatives, or any other person deemed necessary by any of them acting within the scope of the duties entrusted to them, of any invention, design, process, product, device, equipment, software, tools, material, article or arrangement used in the performance of the Contract or incorporated into the Work, and of which Contractor is not the patentee, copyright holder, or assignee, or does not have the lawful right to sell the same.

D. If the City is enjoined from the operation or use of the Work, or any part thereof, as a result of any suits or claims for infringement or unauthorized use of a patent right, copyright, trademark, and/or other intellectual property right, Contractor shall, at its sole expense and at no cost to the City, take reasonable steps to procure the right to operate or use the Work. If Contractor cannot so procure such right within a reasonable time, Contractor shall promptly, at no cost to the City: (1) modify the Work, consistent with applicable requirements of the Contract Documents, so as to avoid infringement of any such intellectual property right; or, (2) replace said Item or Work with an equivalent Item or Work that meets applicable requirements of the Contract Documents and that does not infringe or violate any such intellectual property right.

E. Subsections 3.21.C and 3.21.D, above, shall not apply to any suit, claim or proceeding based on infringement or violation of a patent right, copyright, trademark, and/or other intellectual property right that: (1) arises from modifications to the Work by the City or its agents after acceptance and Final Completion of the Work; (2) arises from any unauthorized modifications to the Work by the City or its agents; or (3) arises from the combination of Work with any products or services not provided or recommended by Contractor where the combination is the basis for infringement.

F. Infringement of intellectual property or other proprietary rights in the performance of this Contract, if determined by a court of competent jurisdiction not to be the basis for indemnification under the law, shall nevertheless be considered a material breach of the Contract, in which case Contractor's defense and indemnification of the City, acquisition of the rights to utilize the aforesaid intellectual property for the Work, or provision of a non-infringing equivalent Item or Work, as provided in this Section 3.21, shall be the sole cure and remedy for said breach.

G. This indemnity shall include the City's release of proprietary information as required by a court, regulatory agency with legal jurisdiction, or as may be required by law, including but not limited to such release in response to a subpoena or request under the California Public Records Act or the San Francisco Sunshine Ordinance.

H. The indemnity provisions set out in this Section 3.21 are in addition to all other hold harmless and indemnity clauses in the Contract Documents, and shall survive Final Acceptance and termination of the Contract. The notice, cooperation and control of defense provisions set forth in Section 3.24 (Indemnification) shall apply to this intellectual property indemnity.

3.22 WARRANTY

A. Contractor's Warranty. Contractor warrants and guarantees to the City that all Materials and equipment provided under the Contract will be first-class in quality and new (unless the City in writing authorizes the use of specifically identified used equipment), and if no quality is specified, then all Materials and equipment shall be of commercial grade, suitable for heavy public use in facilities of similar size and complexity, that the Work will be free from defects and of the quality specified, and that the Work will conform to the requirements of the Contract Documents. The Contractor's Warranty described in this Section shall remain in effect prior to and for not less than two years following Substantial Completion of the Work, or other period provided in the Special Provisions.

B. Equipment and Product Warranties. Contractor additionally guarantees manufacturers' product warranties as may be required by the Contract Documents (N.B. the warranty requirements in the Specifications and Special Provisions). As required in the Contract Documents, Contractor shall provide the City with "pass-through" original equipment manufacturer (OEM) warranties naming the City as a third-party beneficiary with full rights to enforce said warranties. Prior to and as a condition of Substantial Completion, Contractor shall deliver to the Engineer product-warranty and guarantee documents that meet the requirements of the Contract Documents. The effective date of said warranties and guarantees shall commence on the date that the SFMTA determines that the Work has reached Substantial Completion.

C. Repair and Replacement of Defective Work. Contractor further agrees and warrants that if any part of the Work furnished and installed or constructed by Contractor shall fail to fulfill any of the requirements of the Contract, Contractor will without delay, with the least practicable inconvenience to the City, and without further cost to the City, repair or replace defective or otherwise unsatisfactory Materials furnished by Contractor or reperform or repair or otherwise remedy defective Work. Should Contractor fail to act promptly in accordance with these requirements, or should the City determine that the Item or Work is vital to Agency's operations and therefore require repairs or replacements to be made before Contractor can be notified or can respond to notification, Contractor hereby agrees that the City shall have the right to make the necessary repairs or replacements at the expense of Contractor.

D. Exclusions. Contractor's warranty excludes damage or defects caused by abuse, modifications to equipment by the City and not authorized by Contractor, improper or insufficient maintenance, improper operation, and normal wear and tear. Testing shall not be construed as operation.

E. Other Remedies. The warranty provisions of this Section are separate and additional to the provisions for correction of Non-conforming Work as specified in Article 8, the provisions of which are not mutually exclusive remedies, but are cumulative.

F. Secured Warranty. The guarantees and warranties described in this Section are covenants, the performance of which shall be secured by the Performance Bond. (See Section 10.02).

3.23 TAXES

A. Contractor shall be responsible for paying all taxes applicable during the performance of the Work or portions thereof, whether or not said taxes were in effect on or increased after the date of Bid opening. Contractor shall pay all sales taxes levied on Materials, supplies, or equipment purchased by Contractor and used in the performance of or incorporated into the Work, and all other taxes properly assessed against its equipment or other property used in connection with the Work.

B. The cost of all taxes is included in the Bid Price submitted by Contractor with its Bid and the Contract Sum, as that amount may be amended by Change Order(s). The City

shall have no liability for any increase of an applicable tax during the Contract Time, and any such increase shall not be based for a Change Order. The imposition of a new tax or increase in an existing tax applicable to the Work or Contractor's costs is a business risk to be borne by Contractor and shall be considered incidental to the Work.

C. If Contractor is not legally capable of paying a tax (that is, not allowed to collect and remit the tax) applicable to any part of the Work (including but not limited to sales taxes on Materials), and if the City would be found liable for payment of said tax as an end-user, then the City may pay such tax directly to the relevant authority and deduct the amounts paid from any compensation due Contractor.

3.24 INDEMNIFICATION AND DEFENSE OF CLAIMS

A. **Contractor's Obligation to Defend and Indemnify.** To the fullest extent provided by law and consistent with California Civil Code section 2782, Contractor shall assume the defense of, indemnify and hold harmless the City, its boards and commissions, other persons and entities designated as Indemnitees in the Insurance Requirements provisions of the Special Provisions or other provisions of the Contract Documents that specify persons who are Indemnitees, and all of their officers, agents, members, employees, authorized representatives, (or any other persons deemed necessary by any of them to the extent that any claims against such other persons arise from or are related to Contractor's Work or obligations under this Contract), from all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to attorney's fees, directly or indirectly arising out of, connected with or resulting from the performance of the Work. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or willful misconduct tort of any Indemnitee. Contractor's obligations under this Section apply regardless of whether or not such claim, suit, action, loss or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of the City under any provision of this Contract, Contractor shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City (or any other Indemnitee), provided such active negligence is determined by agreement between Contractor and City or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City.

B. **City Consultants.** Contractor's defense, indemnity and hold harmless obligations shall extend to City Consultants (e.g., design professionals and construction managers) providing services under separate written agreement with the City covering any portion of the Project and designated in the Contract Documents as persons or entities to be listed on Contractor's insurance policies as "Additional Insureds." But Contractor's defense, indemnity and hold harmless obligations shall not extend to the liability of a City Consultant (including but not limited to architects and engineers) designated as an Indemnitee or its agents, employees or subconsultants arising out of, connected with or resulting from such Indemnitee's own active negligence, errors or omissions or from such Indemnitee's preparation or approval of maps, plans, opinions, reports, surveys, Change Orders, designs or Specifications, or such Indemnitee's issuance of or failure to issue directions or instructions provided that such issuance or failure to issue is the primary cause of the damage or injury.

C. **Special Damages.** Except as stated here, Contractor shall have no liability to City for any type of special, consequential or incidental damages arising out of or connected with Contractor's performance of the Work. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension or cancellation of the services under this Contract, and negligence or strict liability of Contractor. This limit of liability shall NOT, however, apply to, limit or preclude:

1. Contractor's obligation to pay Liquidated Damages as set forth in the Contract Documents;
2. Damages caused by Contractor's gross negligence, reckless conduct, willful acts or omissions, fraud or illegal or unlawful acts;
3. Contractor's obligations to indemnify and defend the City and other indemnified parties as set forth in the General Conditions (refer to Subsection 3.24.A);
4. Contractor's liability damages that fall within the insurance coverages required under the Contract;
5. Contractor's liability for statutory damages imposed by the City upon Contractor under City Ordinances and Municipal Codes;
6. Fines, penalties and statutory damages, including punitive damages, treble damages, and statutory attorney fees and costs;
7. Contractor's warranties and guarantees under the Contract Documents;
8. Damages and other liability arising under claims by third parties for loss or damage to property or personal injuries, including wrongful death;
9. Liability for violation of environmental regulations and laws (Refer to Subsection 3.24.C);
10. Damages and other liability for infringement of any intellectual property right (Refer to Subsection 3.21.C).

D. Hazardous Materials. Contractor acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste or contaminated material as a result of the Work performed under this Contract are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity.

E. Defense of Claims. On request, Contractor shall defend any action, claim or suit asserting a claim covered by the indemnity requirements stated in this Agreement. Contractor shall pay all costs, including reasonable attorney's fees, that may be incurred by the City and all indemnified parties (the "Indemnitees") specified in Subsection 3.24.A and in the Insurance Requirements of the Contract Documents.

F. Notice of Claim. The City and other Indemnitees will provide Contractor with prompt written notice after receipt of any claim, action or demand ("claim") made by a third party against the City and/or other Indemnitee, provided, however, that no delay on the part of the City or other Indemnitee shall relieve Contractor from any obligation hereunder. Contractor shall obtain the City's and other Indemnitees' consent for Contractor's choice of counsel and such consent shall not be unreasonably withheld or delayed, such that any responsive pleadings may be timely filed, and in every instance, within 30 Days after City or other indemnified party has given notice of the claim, and provided further that City and other Indemnitees may retain separate co-counsel at their expense and participate in the defense of the claim. If the interests of Contractor and the City and/or other Indemnitee conflict, and counsel chosen by Contractor cannot, in City's or other Indemnitee's reasonable opinion, adequately simultaneously represent Contractor and City and/or other Indemnitee, then the cost and expense associated with the City and/or other Indemnitee retaining separate co-

counsel shall be borne by Contractor, otherwise, the cost and expense of separate co-counsel retained by City and/or other Indemnitee shall be borne by the City or other Indemnitee, as applicable. Subject to Contractor's obligation to reimburse City's and other Indemnitee's costs of same, City and other Indemnitees will assist Contractor in the defense of the claim by providing cooperation, information and witnesses, as needed to the extent there is not material conflict of interest.

1. So long as Contractor has assumed and is conducting the defense of a claim in accordance with the preceding Subsection 3.24.E., (a) Contractor will not consent to the entry of any judgment or enter into any settlement with respect to the claim without the prior written consent of City or other affected Indemnitee, as applicable, which consent will not be unreasonably withheld, unless the judgment or proposed settlement involves only the payment of money damages by Contractor and does not impose any obligation upon City and/or other Indemnitee in connection with such judgment or settlement and Contractor obtains the full and complete release of City and/or other Indemnitees ; and (b) City and/or other Indemnitees will not consent to the entry of judgment or enter into any settlement without the prior written consent of Contractor.
2. If Contractor does not assume and conduct the defense of claim as required above, (a) City or other Indemnitee may defend against, and consent to, the entry of any judgment or enter into any settlement with respect to the claim in any manner it reasonably may deem appropriate, and City or other Indemnitee need not consult with, or obtain any consent from, Contractor, and (b) Contractor will remain responsible for any losses City and/or other Indemnitee may suffer resulting from, arising out of, relating to, in the nature of, or caused by the claim to the fullest extent provided in this Section 3.24.

G. Insurance Does Not Limit Liability. Contractor's liability shall not be limited to the amount of insurance coverages required under this Agreement.

H. Resolution of Claim by City. In the event that Contractor and its insurance carrier(s) in bad faith refuse to negotiate and compensate a third party or parties for property damage or personal injuries which arise out of Contractor's performance of the Work, the City shall have the right to estimate the amount of damages and to pay the same, and the amount so paid shall be deducted from the amount due Contractor under this Contract, or an appropriate amount shall be retained by the City until all suits or claims for said damages shall have been settled or otherwise disposed of and satisfactory evidence to that effect shall have been furnished to the City.

I. Liability of JV Partners. If Contractor is a joint venture partnership, the requirements of this Article shall apply jointly and severally to each joint venture partner.

J. Surviving Obligations. The defense and indemnity obligations of this Agreement shall survive Final Completion, termination of the Contract, and Final Acceptance of the Work. Contractor's defense and indemnity obligations shall extend to claims arising after the Work is completed and accepted if the claims are directly related to alleged acts or omissions by Contractor that occurred during its performance of the Work.

K. Compliance with Laws. Refer to Section 15.01.

3.25 PERCENTAGE OF WORK TO BE PERFORMED BY CONTRACTOR

A. By submitting a Bid for the Contract, Contractor certifies that it shall perform on the Site, and with its own organization, Work equivalent to at least 20 percent of the total amount of the Work to be performed under the Contract. Work performed by Contractor shall

be measured by and include costs of labor (wages and benefits), overhead, equipment and Materials directly provided by Contractor and not provided by any Subcontractor or any Supplier.

B. If, during the progress of the Work hereunder, Contractor requests a reduction in such percentage and the Engineer determines in his sole discretion that Contractor (1) has shown good cause for such reduction, (2) that Contractor's request is not made in bad faith and, (3) such reduction would be at no cost and would not otherwise disadvantage the City, then the percentage of the Work required to be performed by Contractor may be reduced. Any reduction in the percentage of Work that Contractor must perform shall be effected by executed Change Order and must comply with the requirements of applicable law, including but not limited to the California Subletting and Subcontracting Fair Practices Act, California Public Contract Code section 4100 et seq.

C. If the SFMTA determines that Contractor at the time it submitted its Bid did not intend to perform at least 20 percent of the Work, or that its request to reduce that requirement is otherwise in bad faith, Contractor shall be deemed to be in material breach of this Contract.

3.26 WORK PERFORMED OUTSIDE SAN FRANCISCO

When performing Work outside the boundaries of the City and County of San Francisco, Contractor shall abide by all applicable rules, regulations and ordinances of the local authorities where the Work is performed, including but not limited to rules and regulations governing loading, hauling, and, disposal of excavated materials, soil and construction debris.

3.27 DESIGN PROFESSIONAL SERVICES

A. In the event that the Contract Documents require that a certain Item be designed by Contractor, Contractor shall, consistent with applicable licensing laws, retain the services of such Design Professional(s) who shall be licensed in the State of California and shall have the necessary expertise and experience required to prepare such design documents to permit Contractor to complete such Item in accordance with the requirements of the Contract Documents. Nothing in the Contract Documents is intended to create a legal or contractual relationship between the City and any Design Professional.

B. Such Design Professional(s) shall be vested with the authority to act on behalf of Contractor in all matters relating to design or supervision of construction of that Item of which he or she is responsible. Contractor's Design Professional(s) may be replaced only with the approval of the City.

C. Contractor shall require its Design Professional(s) to be responsible without limitation for the following:

1. Consult with authorized employees, agents and representatives of the City relative to the City's requirements for the design and construction of the Project.
2. Review the Contract Documents and Reference Documents and studies of the proposed Site and other data furnished to the Design Professional and advise the City whether such data is sufficient for purposes of design, and whether additional data is necessary before the Design Professional can proceed.
3. Provide additional surveys and information related to the Site, which the Design Professional deems necessary for the performance of the Work.
4. Provide design-related services for preparing construction documents necessary for Contractor to construct the Item and coordinate it with and

integrate it to the Work in conformance with the intent and performance requirements of the Contract Documents.

- a. Construction documents shall be submitted to the City for review and acceptance for conformance with the intent and performance requirements of the Contract Documents prior to Contractor initiating permit or construction activities based on such construction documents.
- b. The City's approval or acceptance of construction documents submitted by Contractor shall not be interpreted as a release of Contractor from its responsibilities to coordinate and integrate the various portions of the design and to provide accurate and complete design documents to fulfill the intent and requirements of the Contract Documents.
5. Provide to the City design data, technical criteria and assistance necessary for supporting, protecting, and incorporating into the Project the Item designed by the Design Professional.
6. Comply with requirements of codes, regulations, and written interpretation thereof, existing at the time permit application(s) are made with the local authorities having jurisdiction over the Project.
7. Provide Design Professional's professional liability policies and coverages as required in the Special Provisions and as directed by the City.
8. Provide assistance in connection with the start-up, testing, refining and adjusting of equipment or system designed by the Design Professional for incorporation into the Project.
9. Assist the City in training staff and developing systems and procedures for operation and maintenance and record keeping for equipment or system designed by the Design Professional for incorporation into the Project.

D. Contractor shall be wholly responsible for all engineering and design of such Item regardless of any contribution, input, review, participation, or coordination that the City, its agents, members, employees, and authorized representatives may have provided to Contractor or its Design Professional.

E. Contractor agrees to release the City, its agents, members, employees, and authorized representatives from liability or losses directly or indirectly arising out of, connected with, or resulting from such Items engineered or designed by Contractor or its Design Professional or furnished and installed by Contractor, and Contractor shall bear the costs of corrective and replacement work necessary to complete the Items in accordance with the requirements of the Contract Documents.

3.28 CLEAN CONSTRUCTION ON MAJOR CONSTRUCTION PROJECTS

A. Contractor agrees to comply fully with and be bound by the Clean Construction requirements set forth in Section 6.25 of the San Francisco Administrative Code and Chapter 25 of the Environment Code. The provisions of Section 6.25 and Chapter 25 are incorporated herein by reference and made a part of this Agreement as though fully set forth. If the Project meets Environment Code Section 2504(a) and is located within the Air Pollutant Exposure Zone, as that term is defined in Environment Code Section 2503, refer to Section 02180 of the Technical Specifications, Clean Construction Requirements, for additional requirements.

B. Contractor may seek waivers from the Clean Construction requirements as set forth in Sections 6.25(b)(3) of the Administrative Code 2505 and 2507 of the Environment Code.

C. By entering into the Agreement, Contractor and City agree that if Contractor uses off-road equipment and/or off-road engines in violation of the Clean Construction requirements set forth in Section 6.25 and Chapter 25, the City will suffer actual damages that will be impractical or extremely difficult to determine. Accordingly, Contractor and the City agree that Contractor shall pay the City the amount of \$100.00 per day per each piece of off-road equipment and each off-road engine used to complete Work on the Project in violation of the Clean Construction requirements. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with the Clean Construction requirements.

ARTICLE 4 -- SUBCONTRACTORS

4.01 SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

A. On July 1, 2014, the registration program under section 1725.5 of the California Labor Code went into effect. All Subcontractors who bid or work on a public works project must register and pay an annual fee to the California Department of Industrial Relations. Effective April 1, 2015, no unregistered Subcontractor, regardless of the dollar amount of subcontract work, may be awarded a contract for public work on a public works project. Contractor shall not employ a Subcontractor on or after April 1, 2015 who does not maintain a current registration with the California Department of Industrial Relations.

B. If Contractor subcontracts any part of the Work, Contractor shall have an appropriate written agreement specifically binding each Subcontractor or Supplier to Contractor by the applicable terms and conditions of this Contract, in the same manner as Contractor is bound to the City. Each subcontract agreement shall preserve all rights of the City with regards to the Work to be performed by the Subcontractor or Materials to be provided by the Supplier. All Subcontractors and Suppliers shall have similar agreements with Lower-Tier Subcontractors and Lower-Tier Suppliers. Contractor shall provide to every Subcontractor and Supplier a copy of the Contract Documents to which the Subcontractor or Supplier will be bound, and upon written request of the Subcontractor or Supplier, Contractor shall identify written terms and conditions of any proposed subcontract agreement that vary from the Contract Documents. Subcontractors and Suppliers shall fulfill the same requirements toward their respective proposed Lower-Tier Subcontractors and Lower-Tier Suppliers.

C. All Subcontractors performing Work under the Contract will be considered as employees of Contractor and will be held responsible for their work, which shall be subject to the provisions of the Contract Documents.

D. Unless otherwise specifically provided by the Contract Documents, subcontracting shall be in accordance with applicable Codes governing subcontracting, including but not limited to San Francisco Administrative Code Section 6.21, California Labor Code Section 1771.1, the California Subletting and Subcontracting Fair Practices Act (California Public Contract Code section 4100 et. seq.), and the policies of the SFMTA, and if applicable, federal laws and requirements. Section 6.21 and Section 1771.1 shall govern the designation of, failure to specify, and substitution of Subcontractors and the assignment, transfer and performance of subcontracts.

E. Contractor shall not employ a Subcontractor, Supplier or other person or entity that the City has determined is unqualified to perform the Work or is otherwise not responsible. The City may give written notice of such determination prior to Award or at any time during the term of the Agreement, and upon receipt thereof Contractor shall provide a replacement with a

qualified subcontractor. The City shall have the right of approval of such replacement and shall not be responsible for added costs to Contractor, if any, of terminating and replacing the unqualified or not responsible subcontractor. Contractor shall not utilize any subcontractor, supplier or other person or entity that is debarred by any public agency that is a recipient of federal Department of Transportation capital grant funds. If so directed by the City, Contractor shall at its own expense replace such subcontractor, supplier or other person or entity with a qualified substitute approved by the Agency.

F. Upon request by the Engineer, Contractor shall immediately provide the Agency a copy of each Contract that it proposes to enter or has entered into for subcontracting or assigning any portion of the Work, with such information as will enable the Agency to determine the responsibility and standing of the proposed Subcontractor or assignee. No subcontract or assignment will be approved unless this Contract is incorporated by reference therein. The City will not approve a subcontract or assignment unless the City determines that the proposed Subcontractor or assignee is in every way reliable and responsible and fully able to perform and complete the portion of the Work covered by the proposed subcontract or assignment in accordance with the Contract Documents. Should the Agency determine that the Subcontractor proposed for any portion of the Work does not have the necessary experience or financial qualifications to perform said portion of the Work, or that the proposed Subcontractor does not and cannot obtain in due time the necessary equipment to perform said portion of the Work, or is otherwise unacceptable, Contractor shall substitute an acceptable Subcontractor or shall itself perform said Work (without subcontracting), subject to the Agency's approval.

G. Contractor shall not sublet or subcontract any portion of the Work in excess of one-half of one percent of the total original Bid when no Subcontractor was designated in the original Proposal to perform that Work, nor shall any Subcontractor assign or transfer its subcontract or permit the same to be performed by any other contractor, except with the written approval of the Agency, subject to the provisions of the California Subletting and Subcontracting Fair Practices Act and the applicable provisions of the San Francisco Administrative Code.

H. Contractor shall not replace a Subcontractor that is subject to the requirements of the California Subletting and Subcontracting Fair Practices Act without the express written permission of the Engineer. Contractor shall not replace a DBE, SBE or LBE Subcontractor without the express written permission of the SFMTA.

I. No subcontract or assignment shall relieve Contractor or its sureties of any liabilities or obligations under this Contract.

J. No assignment by Contractor of this Contract or any part thereof, or of the funds to be received there under by Contractor, will be recognized unless the Agency has approved such assignment and the surety has been given due notice of such assignment in writing.

K. The Agency will not approve an assignment of subcontracted Work, unless the instrument of assignment contains a clause to the effect that it is agreed that the funds to be paid the assignee under the assignment are subject to a stop-notice or other prior lien for services rendered or Materials supplied for the performance of the Work (prior to such assignment) called for in said Contract in favor of all persons, firms, or corporations rendering such services or supplying such Materials.

4.02 ASSIGNABILITY OF SUBCONTRACTS

A. All subcontracts of Subcontractors and Lower-Tier Subcontractors and purchase agreements of Suppliers and Lower-Tier Suppliers shall provide that they are freely assignable to the City under any of the following conditions:

1. the City terminates the Contract for cause under provisions of Article 14;

2. the City requests such assignment;
3. the surety providing the performance bond for the Work fails to timely fulfill its obligations under the Performance Bond.

B. The City will notify the Subcontractors, Lower-Tier Subcontractors and Suppliers in writing of those agreements the City wishes to accept.

4.03 SUCCESSORS AND ASSIGNS

A. Contractor shall constantly give its personal attention to the faithful performance of the Work. Contractor shall keep the Work under its personal control and shall not assign the Work or any part of it by power of attorney or otherwise, nor subcontract the whole or any part of the Work, except as provided in the Contract.

B. All transactions with Subcontractors will be made through Contractor, and no Subcontractor shall relieve Contractor of any of its liabilities or obligations under the Contract.

C. When a Subcontractor fails to prosecute a portion of the Work in a manner satisfactory to the City, Contractor shall remove such Subcontractor immediately upon written request of the City, and shall request approval of a replacement Subcontractor to perform the Work, in accordance with San Francisco Administrative Code Section 6.21(a)(9) and the Subletting and Subcontracting Fair Practices Act, California Public Contract Code Sections 4100 et seq., at no added cost to the City.

D. The Contract shall not be assigned except upon the approval of the SFMTA, in accordance with applicable law and the Agency's policies and procedures.

ARTICLE 5 -- CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS

5.01 CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

A. Should the Contract Documents indicate that construction work, or work of any other nature, will or is being performed by other contractors or other forces within or adjacent to the limits of the Work, or is underway at the time the Work was advertised for Bids, Contractor shall cooperate with all such contractors or forces to avoid delay or hindrance to their work. The cost of such cooperation is Incidental Work, and no direct or additional payment will be made therefor.

B. The City reserves the right to perform other or additional work within or adjacent to the limits of Work at any time during the Contract by the use of other forces or contractors. If the performance of such other or additional work that is not indicated in the Contract Documents or is underway at the time of advertising for Bids for this Contract materially increases Contractor's costs, then Contractor may submit a Change Order Request therefor in accordance with Section 6.02.

C. If the City gives Contractor written notice to vacate a location so that other work may be performed by other forces or contractors at the location(s) where Contractor is already performing Work, Contractor shall promptly suspend Work at that location and clean up and demobilize its operations from the location to the extent necessary as determined by the City to allow the other forces or contractors to perform their work. Contractor shall provide the Engineer written notice when cleanup and demobilization has been completed. The Engineer will issue to the other forces or contractors a notice to proceed with their work. After the date of said notice to proceed, Contractor shall allow proper and safe access to the Work at the subject location, and shall schedule and coordinate its Work with the other contractors' work.

D. If Contractor requires access to a location where another contractor is performing work, Contractor shall request such access in writing from the Engineer. The Engineer will provide written notice to Contractor when the work of other forces or contractors at the subject location is completed, and upon receipt of such notification, Contractor shall have full access and shall commence or resume its operations in that location.

E. If Contractor believes it is entitled to a contract time extension caused by its obligations under Subsections 5.01.C or 5.01.D above, it shall comply with the notification requirements of Section 7.02.

F. When it is necessary for Contractor and another contractor or utility owner to work in the same location at the Site, each shall assume the following mutual responsibilities for the benefit of the other at no additional cost to the City:

1. Contractor and the other contractor(s) shall execute identical agreements mutually indemnifying each other from any loss, damage, or injury that may be incurred as a result of the performance of work by the other while both are performing work in the same location; and
2. each shall add the other as an additional insured under their respective liability policies; and
3. the party seeking to use portions of the construction site of the other party to perform its work shall pay all Direct Costs incurred by the other party to accommodate its operations.

If Contractor contends that delay or additional cost is involved because of these requirements, Contractor shall make such claim by the Change Order and Claims procedures provided in Article 6.

G. The City shall not be a party to any agreement between Contractor and other contractors or utility owners, and the City shall have no liability to any party with regard to the lack of coordination and cooperation or the inability of a party to execute specific work requirements. Contractor agrees to defend, indemnify and hold the City harmless for all claims or losses that Contractor or the other contractors may incur as a result of their inability to successfully coordinate or obtain timely access to work areas under the control of another party.

5.02 COORDINATION

A. **Cooperation.** Where multiple contractors are working at the Site, Contractor shall afford other contractors and the City reasonable opportunity for storage of Materials at the Site, shall ensure that the execution of the Work properly coordinates with work of such other contractors, and shall cooperate with them to facilitate the progress of the Work in such a manner as the Engineer may direct.

B. **Notice of Conflicting Conditions.** Where Contractor's Work is adjacent to or placed on top of that of another contractor, Contractor shall examine the adjacent work and substrate and report in writing to the City any visible defect or condition preventing the proper execution or increased cost of its Contract. If Contractor proceeds without giving notice, it shall be held to have accepted that adjacent work or materials and the existing conditions, and shall be responsible for any defects in its own Work consequent thereon, and shall not be relieved of any obligation or any guarantee because of any such condition or imperfection. This provision shall be included in any and all other contracts or subcontracts for Work to be performed where such a conflict could exist. The foregoing does not apply to latent defects (that is, defects not observable by reasonable inspection by Contractor) in another contractor's work. Contractor shall report to the City latent defects in another contractor's work promptly upon discovery.

C. **Other Contractor's Failure to Cooperate.** Contractor shall notify the City promptly in writing when another contractor working at the Site fails to coordinate its work with the Work of this Contract or otherwise cooperate, as the Engineer may direct.

D. **Conflict.** Any difference or conflict that may arise between Contractor and the other contractors or City forces in regard to their work shall be adjusted as determined by the City.

E. **Documents.** If so directed by the City, Contractor shall prepare coordination drawings as necessary to satisfactorily coordinate and interface the Work of its Contract with the work of all other contractors thereby avoiding conflicts that may otherwise arise. If such coordination drawings are not required elsewhere in the Contract Documents, then Contractor may submit a Change Order Request as provided under Section 6.02 for additional costs incurred by it in preparation of such coordination drawings.

F. **Contractor Conference.** At any time during the progress of the Work, the City may, by providing reasonable notice, require Contractor to attend any conference of any or all of contractors engaged in the Project or otherwise performing work at or adjacent to the Site.

G. **Non-cooperation.** If the City determines that Contractor is failing to coordinate its Work with the work of other contractors as directed by the Engineer, the City may, upon 72-hour written notice:

1. Withhold any payment otherwise owed under the Contract until Contractor complies with the City's directions; or
2. Direct others to perform portions of the Contract and charge the cost of Work against the Contract Sum; or
3. Terminate any and all portions of the Contract for Contractor's failure to perform in accordance with the Contract.

5.03 CLEAN UP RESPONSIBILITIES

A. Contractor and other contractors shall each bear responsibility for maintaining their respective work areas on the Site, Construction Area and adjoining areas impacted by their Work free of waste, rubbish, graffiti, debris, or excess materials and equipment at all times.

B. In the event of conflicts between Contractor and other contractors concerning clean up, the City, after issuing 24-hour written notice to the contractors involved, may itself clean up the premises and deduct from the amount due Contractor under the Contract the costs of said clean up in such amount as the City determines equitable.

ARTICLE 6 -- CLARIFICATIONS AND CHANGES IN THE WORK

6.01 GENERAL REQUIREMENTS

A. The City may, at any time between the Notice to Proceed and Final Acceptance, on its own initiative or in a RFI Response, and without notice to Contractor's surety, may issue Clarifications of Specifications and make other Clarifications to Contract requirements. Such Clarifications shall be binding on Contractor, and Contractor shall promptly comply with said Clarifications.

B. The City may, at any time between the Notice to Proceed and Final Acceptance, on its own initiative and without notice to Contractor's surety, may order additions, deletions, or revisions in the Work and Materials by Change Order or Unilateral Contract Modification. Contractor shall promptly comply with such orders and proceed with the Work as directed by the Engineer and required by the Contract Documents.

C. If changes directed by City to the Specifications are of such a nature as to increase or decrease the cost of any part of the Work, the price fixed in the Contract shall be increased or decreased by such amount as Contractor and the Agency may agree upon as the reasonable and proper allowance for the increase or decrease in the cost of the Work.

D. Contractor shall not be entitled to an increase in the Contract Sum or an extension of the Contract Time if Contractor performs work that is not required by the Contract Documents as those requirements may be amended in accordance with the requirements of this Agreement.

E. The procedures set forth in this Article 6 are intended to ensure that when Clarifications and Changes in the Work are proposed, Contractor shall provide to the City its best estimate of the costs and impacts associated with each Clarification and/or Change Order, so that the City may evaluate each potential Change, and proceed on an informed basis. The City also intends that the Clarification and Change Order procedures (including the use of Unilateral Contract Modifications and Force Account) will facilitate payment to Contractor of additional, undisputed amounts of compensation for Additional Work, where such compensation is owed to Contractor.

F. Should the City's Clarification or other written directive, in the opinion of Contractor, exceed the requirements of the Contract Documents, Contractor shall submit a written Change Order Request (COR) to the City within seven Days of receipt of the Clarification, and before proceeding with the Work thereof, as provided in Section 6.02, below. The City shall be relieved of any claim for compensation if said written COR is not received prior to Contractor beginning the affected Work. Contractor waives its rights to request or claim for such additional compensation or adjustment of Contract Time if Contractor fails to submit a written COR to the Engineer within the said seven Days. The City shall not be under any obligation to respond to any statement or attempt made by Contractor to reserve or reactivate such rights in the future.

G. Contractor's timely notice and submission of substantive and relevant information to the City concerning potential and actual delays and other impacts to the Work arising from or related to any Change Order or Clarification or other event that may impact the Work or the Project Schedule are material requirements of this Contract. Contractor agrees that the City will be prejudiced if Contractor fails or delays in providing said notice and information in the form and within the time limits required by this Contract. Contractor's delay or failure to give such notice or submit information in accordance with said requirements shall constitute a waiver of any subsequent claim by Contractor arising out of such Clarification or Change Order.

H. The methods, principles, rules and formulae for calculating any additional compensation or adjustment in Contract time are fully set out in this Article 6 or in authorities referenced in this Contract, and the application of such methods, principles, rules and formulae shall be the sole and exclusive means of determining whether and in what amount Contractor may be owed additional compensation or adjustment in Contract Time for Additional Work. The methods, principles, rules and formulae for calculating additional compensation or adjustment in Contract time set out in this Article 6 shall apply to any Change Order Request, Contract Claim, and legal claim brought under the Contract or otherwise arising from or related to the Work.

I. Contractor shall provide such information as required by the SFMTA to conduct analyses of Contractor's price and costs for Change Orders to confirm that amounts paid for Additional Work under Contract Modifications are fair and reasonable.

J. A Contract Modification must be in writing, signed by both Parties, unless it is a Unilateral Contract Modification issued by the SFMTA. No oral statement or promise of any

person shall effect a modification of this Contract or may be construed as modifying this Contract. See Section 6.06.

6.02 CHANGE ORDERS (CONTRACT MODIFICATIONS)

A. Initiation. Either the City or Contractor may initiate Change Orders. The City may initiate Change Orders by issuing a Proposed Contract Change (PCC), which will include a detailed description of the proposed additions, deletions or revisions with supplementary or revised Drawings and Technical Specifications. A PCC from the City will request from Contractor a quotation of cost and time for completing the proposed modifications. Contractor may initiate Change Orders by submitting a Change Order Request (COR) in accordance with the requirements of this Article 6. After the City issues a PCC, Contractor shall not submit a COR for the same Work addressed in the City's PCC.

B. Contractor PCC Quotation Time Requirements. Contractor shall submit to the City a PCC cost and Contract Time adjustment proposal, in accordance with Subsection 6.02.C below, within 14 Days of receipt of a PCC. If Contractor fails to submit a PCC cost and Contract Time adjustment Proposal within said 14-Day period, or if the price or Contract Time adjustment cannot be agreed upon, the City may either retract the PCC or issue a Unilateral Contract Modification (in accordance with Section 6.03) instructing Contractor to proceed with the PCC Work based on (1) the City's estimate of the cost and/or adjustment of Contract Time required to perform the Work at issue, or (2) on a Force Account basis (in accordance with Section 6.05).

C. PCC and COR Cost and Time Adjustment Proposal Requirements.

1. In a format required by the Engineer, Contractor shall provide to the Engineer two copies of its PCC or COR cost Proposal, which shall include a full and complete itemized breakdown of Direct Costs (i.e. labor, material, equipment) and requested Mark-up for profit, overhead (and any other costs that do not qualify as Direct Costs), in accordance with Section 6.04 (Cost of the Work). Subcontractor(s) of every tier shall also provide that information, through the Contractor, using the same form as required for Contractor. A COR must reference all related progress schedule activities, and the Specification provisions and Drawings directly pertaining to the COR.
2. If Contractor asserts it is entitled to an adjustment in Contract Time for performance of the Work under a proposed change order, whether by COR or PCC, Contractor shall submit a Notice of Delay per Section 7.02 and submit to the City a written explanation of the causes of the delay or other impacts to the Work and a CPM time impact evaluation using sub-network or fragmentary network with a written narrative and a schedule diagram (or other written documentation acceptable to the Engineer) showing the detailed work activities involved in a proposed change order that may affect the Critical Path and increase the Contract Time. The analysis shall also show the impact of the Change Order on other Work and activities of the proposed schedule adjustment. If Contractor requests compensation for the actual overhead and other indirect costs associated with a compensable delay in lieu of the Mark-ups for all other costs and profit as stated in section 6.04.B, Contractor shall submit documentation (sufficient to the satisfaction of the Engineer) proving Contractor's actual field office overhead and home office overhead costs allocable solely to the Additional Work, as specified under Section 6.04.C.
3. Contractor shall not be paid profit and reimbursed its overhead and other indirect costs, and also receive a Mark-up on its Direct Costs. Contractor

shall indicate in its COR whether it elects to be paid a Mark-up on its Direct Costs as provided in Section 6.04.B, or whether it will seek reimbursement subject to proof of its actual overhead and other indirect costs. If Contractor fails to so indicate, the City shall pay Contractor the Mark-up on its Direct Costs as provided in Section 6.04.B.

D. SFMTA Review of COR. The Engineer will review the Contractor's written COR and within 30 Days after receipt will provide a written response and determination granting or denying the COR. Contractor shall diligently proceed with the Work in accordance with the Engineer's determination, which shall be administratively final and binding on the City and Contractor unless Contractor submits a written Notice of Potential Claim as specified under Section 13.03.

E. Execution of Change Orders (Contract Modifications): When the SFMTA and Contractor agree on the total cost and time to complete Work included in a COR or PCC, the City will prepare for Parties' signatures a Contract Modification to effect the changed or Additional Work. Only a properly approved Contract Modification or Unilateral Contract Modification may amend the Contract. The additional costs to Contractor or the credit to SFMTA resulting from a Change Order shall be determined by one of the following methods:

1. By Unit Prices stated in the Contract Documents. (Unit prices shall include all costs, overhead and any Mark-up; no additional Mark-up shall be paid on Unit Prices); or
2. By mutual agreement to a Lump Sum to be paid upon completion of the Work or identified Milestones (determined in accordance with the requirements set out in Section 6.04 (Cost of the Work); or
3. By Force Account, as provided in Section 6.05; or.
4. Subject to proof, the sum of the Direct Costs incurred by Contractor (and any Subcontractor that perform said Work) and a Mark-up, as provided in Subsections 6.04.A and 6.04.B; or
5. Subject to proof, the sum Direct Costs and allowed indirect costs, as provided in Subsections 6.04.A and 6.04.C.

F. Release of Claims. Contractor agrees that the compensation/price of Additional Work and/or Contract Time adjustment stated in a negotiated Change Order (Contract Modification) shall fully compensate Contractor for all indirect and Direct Costs, overhead, expenses, inefficiency, profit and time impacts of every nature arising out of or related to the Additional Work to be performed under that Change Order. Contractor agrees that in executing a negotiated Contract Modification, it releases the City from any and all claims for additional compensation or Contract Time relating to the changes in the Work effected by said Contract Modification, and further agrees that it shall not seek additional Contract Time or compensation for said Additional Work. Said agreed waiver is included in the exchanged consideration for such Change Order, the text of which is set out in Subsection 6.02.F.5, below. In addition, the following terms and conditions shall apply to all Change Orders:

1. If Contractor does not provide notice and documentation of delay to the City in accordance with the requirements of Section 7.02 and sufficient to establish that Contractor is entitled to additional compensation or an adjustment of Contract Time, Contractor shall have waived any claim for additional compensation or adjustment in Contract Time associated with, arising from or related to events or conditions causing the alleged delay and Contractor shall perform the Work required under by the Change Order as directed by the Engineer.

2. It shall be a material breach of the Contract for Contractor to refuse to perform Work in accordance with (and as directed by) a Change Order.
3. Contractor shall not condition or qualify any Change Order with a reservation of rights to seek at a later time additional compensation (Contract Amount) or Contract Time for the changed Work described in the Change Order, and such reservation even if not rejected by the Engineer shall be severed and have no effect or authority .
4. All delays caused to the progress schedule as a result of Contractor's failure to execute timely a Change Order in accordance with this Article 6 shall be the responsibility of Contractor and may subject Contractor to liability for liquidated damages as specified in the Special Provisions, Liquidated Damages.
5. Each executed Contract Modification shall include the following paragraph:

The compensation (time and cost) set forth in this Change Order comprises the total of all compensation due to Contractor, all Subcontractors and all Suppliers, as a result of the events giving rise to the Change Order and for the Additional Work described in this Change Order, including any time impact on unchanged Work, including delays and inefficiencies. The execution of this Change Order constitutes an accord and satisfaction of any claim for additional compensation or time for the Additional Work effected by this Change Order, and Contractor on behalf of itself, and all Subcontractors and Suppliers, specifically waives and releases any and all claims rights or interest, including but not limited to legal and equitable claims for direct, indirect, and overhead costs, delay, impact, disruption, loss of efficiency or other special, extraordinary or consequential costs arising from or related to the Work described in the Change Order, without exception or reservation of any kind.

G. Warranty Not Impacted. Change Orders issued under this Article 6 or extensions of Contract Time made necessary by reason thereof shall not in any way release or modify any guarantees or warranties required of or provided by Contractor under the provisions of the Contract Documents, nor shall they relieve or release the obligations of the sureties that guaranty Contractor's performance of Work. All guarantees and warranties of the Contract shall apply equally to Work performed under any Change Order. The sureties, in executing such bonds, shall be deemed to have expressly agreed to any such Change Orders and to any extension of Contract Time made by reason thereof. Contractor shall be solely responsible for giving any required notice to a surety or another person of any change affecting the Work, Contract Sum or Contract Time that is required to be given to its sureties by the provisions of any bond. Contractor shall be liable for any damages to the City arising from Contractor's failure to provide such required notice to the surety.

6.03 UNILATERAL CONTRACT MODIFICATION

A. General. When due to the requirements of the Project there is insufficient time to negotiate a Change Order through the PCC process described in Section 6.02, or when the City and Contractor are unable to agree on the cost or time required to complete the change in the Work described in a PCC, the City may issue a Unilateral Contract Modification instructing Contractor to proceed with a change in the Work.

B. Protest. Should Contractor disagree with any terms or conditions set forth in a Unilateral Contract Modification, Contractor shall submit a Change Order Request (COR), (complete with cost and time analyses) within 7 Days of receipt of the Unilateral Contract Modification, in accordance with the requirements of Section 6.02. If a COR is not timely submitted as required by Section 6.02, Contractor waives all rights to additional compensation

for said Work, and payment, which shall constitute full compensation for Work included in the Unilateral Contract Modification, and the City will make payment as set forth in the Unilateral Contract Modification.

The City will review the COR and issue a determination per Section 6.02. If the City denies the COR in whole or in part, Contractor may contest the decision by filing a timely Notice of Potential Claim per Section 13.03, below. As a point of clarification, the protest procedures specified in this Subsection do not apply to circumstances where Contractor submitted a complete Cost Proposal and/or Time Adjustment Proposal prior to the issuance of the Unilateral Contract Modification at issue, and the City subsequently issued a Unilateral Contract Modification because the parties were unable to timely agree on the cost and/or time to complete the change in the Work. In such circumstances, if Contractor disagrees with any terms or conditions set forth in the Unilateral Contract Modification and wishes to pursue the dispute, Contractor must submit a timely Notice of Potential Claim per Section 13.03, below (but does not have to submit a revised/new COR).

6.04 COST OF THE WORK

A. **Direct Costs.** "Direct Costs" are those costs actually incurred by Contractor to perform the Work under a Change Order, which for purposes of calculating Direct Costs under this Contract are limited to and shall be calculated as provided below

1. **Labor Costs.**
 - a. **Prevailing Wages.** Labor costs shall be itemized by trade, based on prevailing wages and fringe benefits applicable for each craft or type of work used in the changed Work, as listed by trade in the California Employment Development Department's General Prevailing Wage Determination for San Francisco ("EDD Wage List") (issued pursuant to Sections 1770, 1773, 1773.1 of the California Labor Code). Fringe benefits (e.g., worker's health and welfare, pension, vacation, training) shall be applied only to the straight-time component of cost and shall not apply to the premium component, unless otherwise required by the California Labor Code. Fringe benefits shall be calculated as stated in the EDD Wage List, but shall include all fringe benefits Contractor pays to persons performing the Work, whether or not such benefits are specifically listed in the EDD Wage List. Compensable prevailing wages shall not exceed the wages and benefits established by law (and as stated in the EDD Wage List) as prevailing in the locality and at the time the Work under the Change Order is performed, as determined by the State Director of Industrial Relations pursuant to the California Labor Code. (Refer to Section 11.01.C.) The City shall have no liability for wages or benefits paid by Contractor that exceed said prevailing wage rates.
 - b. **Labor Classification.** Contractor's use of a labor classification that does not accurately reflect the Work performed by employees in that labor classification and that increases extra work costs will not be permitted unless Contractor establishes to the Engineer's satisfaction the necessity of using such labor classification. Non-direct labor costs, including costs for foremen not physically performing Work on the Site and other costs of superintendents and supervision of the Work shall be considered as included within Mark-up for overhead and profit.

- c. Labor Surcharge. The labor surcharge shall only include those types of payroll items listed in the Caltrans "Labor Surcharge & Equipment Rental Rate Book" (i.e., worker's compensation, social security, Medicare, Federal unemployment insurance, State unemployment insurance, and State training taxes). Payroll/business taxes shall be considered part of overhead.
- d. Mark-up. Every Mark-up is subject to negotiation, but in no case shall a Mark-up exceed the percentage value listed herein in Subsection B below.

2. Materials. The City will compensate Contractor for Work performed under Change Orders only for those Materials actually furnished by Contractor and directly required for performing the Change Order Work or Materials incorporated into the Work. The cost of such Materials shall be the direct cost, including sales tax, to the purchaser, whether Contractor, Subcontractor or Lower-Tier Subcontractor, from the Supplier thereof. Direct Costs may include the cost of transportation, but delivery charges shall not be compensable unless approved in advance by the Engineer. If a trade discount by a Supplier is available to Contractor, such discount shall be credited to the City notwithstanding the fact that such discount may not have been taken. If the Materials are obtained from a Supplier or source owned wholly or in part by Contractor, payment thereof shall not exceed the current wholesale price for the Materials, as determined by the City. The term "trade discount" includes discounts given for payment in cash.

3. General Equipment. Payment for costs of General Equipment on Change Orders will be made at the lesser of the rental rates listed for such equipment that are listed in and as specified in the current edition, at the time of the Change Order, of: (1) the Labor Surcharge & Equipment Rental Rate Book published by the California Department of Transportation and available for download at <http://www.dot.ca.gov/hq/construc/equipmnt.html>; or (2) "Rental Rate Blue Book," published by Machinery Information Division of PRIMEDIA Information, Inc., 1735 Technology Drive Suite 410, San Jose, California 95110-1313. Such rental rates shall be adjusted as appropriate and will be used to compute payments for equipment, regardless of whether the equipment is under Contractor's control through direct ownership, leasing, renting, or other method of acquisition. Daily, weekly, or monthly rates shall be used, whichever are lower.

4. Unless specifically approved by the Engineer in writing prior to performance of the Work at issue, hourly rates that combine labor and equipment costs shall not be used; labor and equipment costs must be accounted separately.

- a. Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications shall be used to classify equipment for determination of applicable rental rates. If, however, equipment of unwarranted size or type and cost is used, the cost shall be calculated at the rental rate for equipment of proper size and type.
- b. The actual time (rental period) to be paid for equipment shall be the time the equipment is in productive operation on the Work

under the Change Order. In the event that use of hourly rental rates is appropriate in computing the rental of equipment, any time less than 30 minutes shall be considered one-half hour. No payment will be made for time while equipment is inoperative due to breakdown or for non-Working Days. In addition, the rental time shall not include the time required to move the equipment to and from the Site. Loading and transportation costs will be paid, in lieu of rental time, only if the equipment does not move under its own power and is utilized solely for the Work of the Change Order. The City will pay mobilization and demobilizations costs only for equipment that is required to perform the Work under the Change Order and that is not already on the Site.

- c. Individual pieces of equipment having a replacement value of \$1,000 or less shall be considered to be small tools or small equipment, and no payment will be made since the costs of these tools and equipment are included as part of Contractor's Mark-up for overhead and profit, as set out in Section 6.04.B.
- d. Payment to Contractor for the use of equipment as set forth herein shall constitute full compensation to Contractor for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to Contractor incidental to the use of the equipment.
- e. Costs of General Equipment not listed in the publications specified in Subsection 6.04.A.3 shall be based on actual rental invoices. Copies of all invoices shall be provided as support documentation with each PCO cost proposal.

5. Specialized Equipment. Payment in Change Orders for Specialized Equipment shall be as provided in Technical Specifications (Division 1).
6. Standby Claims and Site Loading Prohibited. Contractor shall give immediate notice in writing to the Engineer if Contractor places Equipment on standby (that is, Equipment is idled due to a delay that Contractor did not cause and could not reasonably avoid) and Contractor will seek compensation for the costs of said Equipment during such standby period. Said notice shall be dated and specifically identify the Equipment placed on standby and the daily rates for each piece of said standby (idled) Equipment. Said notice must be received no later than 12 hours after the Equipment has become idled. If the Engineer does not approve the standby status of said Equipment in writing within 12 hours of receipt of the standby equipment notice from Contractor, Contractor shall demobilize said Equipment. The City shall have no liability for costs (other than demobilization and remobilization) for Equipment placed on standby that was not specifically approved by the Engineer as provided herein. Only Equipment that was present on the Site and that was actually performing Work at the Site at the commencement of the delay may be placed on standby. Contractor shall be efficient in its mobilization and demobilization of Equipment. Contractor shall not load the Site with Equipment that is not actually performing Work or is not scheduled to perform Work in the immediate future.

7. Additional Costs for Insurance and Bonds. If, due to Contract Modifications that add Work or extend Contract Time, Contractor is charged additional insurance or bond premium(s), the City will reimburse Contractor the increase of such premium(s) without Mark-up, provided that Contractor can establish that the increase in premium was directly caused by the change in the scope of the Work or extended Contract Time required by Contract Modifications and is not due to claims brought against such insurance or bonds or any change in Contractor's safety record and rating. Any request for compensation for additional premium charges are subject to documentation, proof and audit as the City may require, but shall include at a minimum the following:

- a. Copy of the applicable endorsement to the Builder's Risk insurance policy, if said policy was on a declared-project basis.
- b. Evidence of property insurance in the Builders Risk policy is placed on a reporting form basis.
- c. Evidence establishing that the surety(ies) that issued the bonds for the Work have increased the punitive value of the bond(s) and have charged additional premium directly attributable to the increase bond value.

B. Contractor's Mark-up for Other Costs, Overhead and Profit. To the total of the Direct Costs calculated as provided in Subsection 6.04.A as part of a Change Order, a negotiated Mark-up as specified below shall be added, which shall constitute full compensation for all overhead, indirect costs, profit, and any other costs to Contractor arising from or related to the performance of the Additional Work. Said Mark-up shall constitute full compensation for all costs and expenses not described as Direct Costs, as defined herein. The following limitations shall apply to Contractor's Mark-up for indirect and other costs, overhead and profit on all Change Orders that do not involve compensable time as described in Section 7.02:

1. For Work performed by Contractor itself (that is, not by a Subcontractor), the Mark-up shall not exceed of 15 percent of Contractor's Direct Costs, as defined in Subsection 6.04.A.
2. For Work performed by a Subcontractor, the Subcontractor's Mark-up shall not exceed 15 percent of the Subcontractor's Direct Costs, as defined in Subsection 6.04.A. Contractor may bill a Mark-up for itself not to exceed five percent of the Subcontractor's Direct Costs.
3. For Work performed by a Lower-Tier Subcontractor or supplier, the Lower-Tier Subcontractor or supplier's Mark-up shall not exceed 15 percent of said Lower-Tier Subcontractor or supplier's Direct Costs, as defined in Subsection 6.04.A. Contractor and the first-tier Subcontractor may each bill a Mark-up for themselves not to exceed five percent of the Direct Costs of the Lower-Tier Subcontractors below them.
4. In no case shall the total sum of all Mark-ups applied to a Change Order exceed 25 percent of the sum of Direct Costs for the Work, regardless of the number or tiers of Subcontractors or Suppliers associated with said Change Order.
5. For Change Orders that result in a net decrease in Direct Costs for Work performed by Contractor or a Subcontractor, the City shall receive a credit based on the actual net decrease in Direct Costs plus ten percent of the value of the credited Direct Costs. Neither Contractor nor any

Subcontractor shall receive a Mark-up on their respective lower-tier Subcontractors to administer the credit Change Order.

6. When both additions and credits are included in a single Change Order, Contractor's Mark-up shall be computed on the basis of its Direct Costs and labor productivity for the net change in the quantity of the Work. For example, if a Change Order adds 14 units on one Drawing and deletes five units on another Drawing, the Mark-up shall be based on the net addition of nine units.
7. Contractor's right to recovery of compensation, costs, expenses and damages for delay that are the result of extras, changes, additions or deletions in the Change Order Work shall be limited to the adjustment of the Contract Sum (including without limitation the Mark-ups specified) as set for above. However, if Contractor seeks actual indirect costs associated with a compensable delay in lieu of the Mark-ups for all other costs and profit as stated above, Contractor shall submit the actual indirect cost and proposed profit as specified on Section 6.04.C, below.

C. Calculation of Actual Indirect Costs.

1. Field Office Overhead – Daily Rate. Any additional field office overhead costs incurred by Contractor due to a compensable delay that Contractor could not have reasonably avoided or mitigated shall be compensated subject to proof of actual costs as follows:
 - a. Within the time and in the format specified by the City, Contractor shall submit a detailed list of actual daily field office overhead costs that are time related and that Contractor incurred directly and solely as a result of the compensable delay to the Work.
 - b. Contractor shall submit the list of overhead costs for which it seeks compensation within seven Days of its Notice of Delay.
 - c. If the City agrees to compensate Contractor for its actual indirect expenses, the City shall not pay or be liable for any other Mark-up on the Direct Costs or actual overhead costs incurred due to delay to the Work.
 - d. The information submitted as required above shall be submitted in sufficient detail to allow review, and shall be prepared in accordance with generally accepted accounting principles. The City shall have the right to audit Contractor's claimed additional costs as provided in Section 2.06.
2. Extended Home Office Overhead - Daily Rate. Absent extraordinary circumstances, the City shall have no liability for costs allocated to extended home office overhead. Extended home office overhead costs arising from Contractor's performance of Additional Work shall only be compensable to the extent that Contractor proves to the satisfaction of the SFMTA that all of the following conditions have been met:
 - a. the delay was caused by the City and meets the conditions set out in Section 7.02; and
 - b. the delay was of indefinite (unknown) duration during the period of said delay; and

- c. the delay forced Contractor to suspend more than 75 percent of all Work; and the delay substantially reduced or suspended progress payments to the Contractor for the Work; and
- d. the SFMTA required Contractor to remain on standby, at-the-ready to resume the Work immediately; and
- e. Contractor was not able to reasonably mitigate its damages arising from said delay by obtaining other work.

If Contractor claims compensation for costs of extended home office overhead, it shall provide to the SFMTA a Notice of Delay in accordance with Subsection 7.02.K, and detailed documentary evidence supporting that claim, including a Critical Path analysis/report for the periods of claimed delay. Said evidence shall be prepared in accordance with generally accepted accounting principles, and may be audited by the City in accordance with the Section 2.06. If the City determines that extraordinary circumstances justify payment of extended office overhead, the SFMTA shall determine the method by which said overhead is calculated.

- 3. Profit. In addition to compensation for direct and indirect costs incurred by Contractor arising from or related to Contractor's performance of Additional Work, the City will pay Contractor an amount of fixed profit, which shall be negotiated but shall not exceed five percent of the total value of the Direct Costs and indirect costs incurred by Contractor directly related to its performance of the Additional Work.

D. Costs Not Included in the Work. Except as specifically provided herein, Contractor and Subcontractors shall not receive any additional compensation for costs incurred by Subcontractors to review, post, coordinate, and perform related tasks to administer Change Orders. Such costs shall be considered Incidental Work and normal business costs, which are contractually determined between Contractor and its Subcontractors prior to Bid, and such costs shall be included in Contractor's Total Bid Price and the Contract Sum.

E. Records. Contractor shall maintain its records in such a manner as to provide a clear distinction between the Direct Costs of Change Orders and the cost of the Work described in the Contract when it was awarded to Contractor. This requirement applies to all types of Change Orders, including but not limited to Unilateral Contract Modifications and Force Account, as well as additions, deletions, revisions to the Work, clarifications, CORs, and Claims initiated by Contractor.

6.05 FORCE ACCOUNT WORK

A. General. Force Account is subject to the following terms and conditions:

- 1. When additions, deletions, or revisions in the Work are to be paid for on a Force Account basis, all Direct Costs itemized in Subsection 6.04.A shall be subject to City's approval and compensation will be determined as set forth in this Agreement.
- 2. The City will direct Contractor to proceed with the Work on a Force Account basis, and the City will establish a "not to exceed" budget.
- 3. The City will pay only the actual necessary costs for the Work that is verified in the field by the City on a daily basis.
- 4. Contractor shall be responsible for all costs related to the documentation, data preparation, and administration of Force Account Work. Compensation for such costs are included and Contractor shall be fully compensated by payment of Mark-up for overhead and profit Mark-up, as provided in Subsection 6.04.B.

B. Notification and Verification.

1. Contractor shall notify the City in writing at least 24 hours in advance of its schedule before proceeding with Force Account Work. The City shall have no obligation to compensate Contractor for Force Account Work if Contractor fails to provide timely notice to the City before commencing said Force Account Work.
2. Contractor shall document all Force Account Work, including identification of the name, trade and labor class (e.g., laborer, apprentice, journeyman carpenter) of each worker assigned to perform that Work, the specific equipment used to perform that Work, and the labor and equipment hours actually expended performing said Work.
3. Contractor shall identify the equipment used to perform the Work by the equipment types or identifiers used in the Caltrans Labor Surcharge and Equipment Rental Rate Book or the Primedia Rental Rate Book (referenced in Subsection 6.04.B.4) and the equipment or vehicle identification number.
4. Contractor's failure to provide full, accurate, contemporaneous, and verifiable information as required herein shall excuse the City's obligation to compensate Contractor for undocumented or poorly documented Force Account Work. Changes made to daily logs, work tickets or other Force Account Work documentation made after the day the Force Account Work was performed shall not be accepted and the charges for such added labor or equipment shall not be compensated.
5. Contractor's shall at the end of each Working Day or shift, as applicable, to obtain the Engineer's written verification of Work performed, and equipment and personnel utilized in performing Force Account Work during that Day or shift performed on that Day or shift.
6. Contractor shall notify the City when the cumulative costs incurred by Contractor for the Force Account Work equal 80 percent of the budget established by the City for that Work. The City shall have no obligation to compensate Contractor for Force Account Work that exceeds the "not to exceed" budget amount, if Contractor fails to provide the required notice before exceeding 80 percent of the Force Account budget.

C. Work Performed by Special Forces or Other Special Services.

1. For procurement of special equipment, such as track work, poles, fabricated assemblies, software and operating equipment, or when the Engineer and Contractor, by agreement reached prior to commencement of the said special Work, determine that a special service or an item of additional work cannot be performed by the forces of Contractor or those of any of its Subcontractors, such service or additional work item may be performed by a specialist. Invoices for such service or item of additional work on the basis of the current market price thereof may be accepted without complete detailed explanation of labor, material, and equipment costs when it is impracticable and not in accordance with the established practice of the special service industry to provide such detailed explanation.
2. In those instances in which Contractor is required to perform extra work necessitating a fabrication or machining process in a fabrication or machine shop facility away from the Site, the charges for that portion of

the extra work performed in such facility may, by agreement, be accepted as a specialist billing. The Engineer must be notified in advance of all Work that will not be performed at the Site.

3. An amount not to exceed a five percent Mark-up will be added to the specialist invoice price, less a credit to the Agency for any cash or trade discount offered or available, whether or not such discount may have been taken. Said five percent increase is in lieu of the percentage increase provided in Subsection 6.04.B for work performed by a Subcontractor.

D. Reports. Contractor shall diligently proceed with the approved Force Account Work and shall submit to the City no later than 12:00 p.m. of the Day following performance of Force Account Work a daily Force Account Work report on a form obtained from the City. The report shall provide an itemized, detailed account of the daily Force Account labor, material, and equipment, including names of the individuals and the specific pieces of equipment identified by manufacturer's model type and serial number. Contractor's authorized representative shall complete and sign the report. Contractor will not be compensated for Force Account Work for which said timely report is not completed and submitted to the City.

E. Records. Contractor shall maintain detailed records of all Work done on a Force Account basis. Contractor shall provide a weekly Force Account summary indicating the status of each Force Account Work directive in terms of actual costs incurred as a percent of the budget for the respective Force Account Work directive and the estimated percentage completion of the Force Account Work.

F. Subsequent Agreement. If Contractor and the City reach a negotiated, signed agreement on the cost of a Change Order while the Work is proceeding on a Force Account basis, Contractor's signed written reports shall be discontinued and all previously signed reports shall have no further contractual effect.

6.06 ORAL MODIFICATIONS ARE INVALID

No oral statement of any person shall in any manner or degree modify or otherwise affect the terms of this Contract. This Contract is an integrated agreement consisting of the documents listed in Section 1.04. This Contract may be modified only by a properly executed written Change Order as provided in this Article 6. Reference Documents are not Contract Documents. This Contract may be modified only by a fully executed Change Order, as provided in this Article 6. Written records of negotiation signed by the Engineer and Contractor's representative may be used to confirm or explain provisions of a fully executed Change Order (Contract Modification), but such documents may not be used to establish the existence of a Change Order or other modification to the Contract or to establish an equitable equivalent of an executed Change Order.

ARTICLE 7 -- TIME

7.01 PROGRESS AND COMPLETION

A. Commencement of Work. When the Contract has been certified by the Controller, the Agency will designate the official date for commencement of the Work (NTP) and will notify Contractor in writing by a Notice to Proceed. Contractor shall take no action that shall obligate the City to, and the City shall not be obligated for, the expenditure of funds before said official commencement date. Contractor shall begin the Work within 10 Days after said official commencement date, and shall prosecute the same diligently thereafter at a rate sufficient to enable it to complete the Work within the Contract Time.

Contractor shall not commence any demolition, removal, or reconstruction Work at the Site

until Contractor has presented evidence satisfactory to the City Representative that it can, upon commencement, prosecute the Work continuously and expeditiously, and the City has issued to Contractor a Notice to Proceed.

B. Notice of Commencement of Work. Contractor shall notify the Engineer in writing, not less than three Working Days in advance, of the actual date Contractor will begin the Work under the Contract. Said notice shall contain information as to the time and place at which Contractor wishes to commence the Work, and the nature of the Work to be done. Similar notice shall be given by Contractor before commencement of any portion of the Work specifically identified in the Bid Documents as an option or a separate phase of the Work.

C. Baseline and Progress Schedules.

1. Prior to commencing Work, Contractor shall submit to the Engineer for approval a Baseline Schedule showing the order in which Contractor proposes to carry out the Work; the dates on which Contractor will start the various important features, phases and milestones of the Work, including procurement of Materials, plant and equipment; and the contemplated dates for completion of said Work.
2. The Baseline Schedule shall utilize the "critical path" method (CPM), be drawn to scale as to time, and shall be in general accordance with the "Use of CPM in Construction," published by the Associated General Contractors of America, unless other schedule requirements are stated in Technical Specifications (Division 1) or the Special Provisions.
3. Contractor's Baseline Schedule shall be consistent in all respects with the Contract Time, scheduling and order of Work requirements of the Contract.
4. The City's obligation to issue progress payments is contingent on Contractor's submittal of acceptable and updated Work progress schedules, as required under this Agreement.

D. Performance and Completion of the Work.

1. Except as to those causes for delay that are specifically recognized in Section 7.02 as extending Contract Time for Contractor's performance of the Work, Contractor shall be fully responsible for performing Work according to the Baseline Schedule, as that schedule may be amended by the City's written approval by Change Order.
2. Contract Time shall include attendance at pre-construction conferences; joint survey and documentation of existing conditions, if required by the Contract Documents; preparation and submittal of shop drawings, equipment lists, Schedule of Values, progress schedule, submittal schedule, and requests for substitutions; and other similar activities.
3. The Work of this Contract shall be brought to Substantial Completion and Final Acceptance, as determined by the City, in the manner provided for in the Contract Documents within the limits of Contract Time set forth in the Special Provisions, from and after the official start date established in the written Notice to Proceed.
 - a. Issuance of a Notice of Substantial Completion may not precede the issuance of a Temporary Certificate of Occupancy, if such Temporary Certificate of Occupancy is required by any regulatory authority that has jurisdiction over the Work.

- b. During the period between Substantial Completion and Final Acceptance, Contractor shall complete the Punch List Work, but Contractor shall not disrupt the City's Beneficial Use of the Work or any public use of the Work.
- c. Final Acceptance is a condition precedent to final payment. Final Acceptance will be effected when the City issues formal notice to Contractor that the Work is complete and is acceptable to the City and that Contractor has met all substantive and administrative obligations of the Contract. The City will issue final payment following Final Acceptance.
- d. The limits of Contract Time as specified in the Special Provisions shall not be affected by the City's exercise of any of the Alternate Bid Items described in the Contract Documents, provided that said Alternate Bid Items were incorporated into the Contract within the number of months after Award, as specified in the Special Provisions.
- e. The specified limits of Contract Time may be changed only by a Change Order. Claims for compensation based on adjustment of the limits of Contract Time shall be made in accordance with the requirements of Section 6.02 (Change Orders) and Article 13 (Claims).

E. Availability of Materials and Personnel. Contractor shall at all times keep at the Site or readily available sufficient Materials and employ sufficient supervision and workers to prosecute the Work at the rate necessary to reach Substantial Completion of the Work and Final Completion of all Punch List Items within the specified limits of Contract Time required by the Contract Documents. Contractor shall not start the Work unless it has sufficient equipment and Materials available for the Work to support said diligent and continuous performance of the Work. Should Contractor at any time during the progress of Work, refuse, neglect, or be unable for avoidable reasons to supply sufficient resources to prosecute the Work continuously and at the rate necessary to complete the Work within the Project Schedule or the specified limits of Contract Time, in accordance with the currently accepted progress schedule update, the City shall have the right to determine Contractor to be in Default and terminate the Contract for cause as set forth in Section 14.01.

F. Scheduling of Work. Contractor shall be responsible to schedule the Work and maintain the Project Schedule so as not to delay the progress of the Project or the schedules of other contractors. Contractor is required by virtue of this Contract to cooperate in every way possible with other contractors in order to maintain the Schedule and complete the Work within the specified limits of Contract Time. No additional compensation will be paid for such cooperation.

G. Night and Weekend Work. Contractor may be permitted or required to prosecute the Work at night or on Saturdays, Sundays, and/or Holidays, if at any time the Engineer deems it necessary for the proper progress of the Work. Contractor shall not perform Work at night or on Saturdays or Sundays or Holidays unless permitted or required by the Engineer. Contractor shall, for the duration of this Contract, have adequate workers and equipment readily available on short notice to protect adjoining property, maintain the Work, or to make emergency repairs on Saturdays, Sundays and Holidays or during other than the Regular Working Hours. Contractor shall furnish the Engineer with names and telephone numbers of at least three persons to call should any such emergency arise, and these persons shall be authorized to perform such work as the Engineer deems necessary.

7.02 EXTENSIONS OF TIME, DELAYS, ACCELERATION

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A. Extension of Contract Time. The Agency may extend Contract Time if and to the extent the Agency determines Contractor cannot complete the Work within the Contract Time because of Unavoidable Delay, as described in this Section. Extensions of time that cumulatively extend the Contract Time more than 10 percent of the original Contract Time (as stated in the Special Provisions) shall be subject to the approval of the SFMTA Board of Directors. These extensions shall be in writing, except that no extension will be granted after Final Acceptance.

B. PCC and COR Time Adjustment Proposal Requirements. If Contractor asserts it is entitled to an extension of Contract Time because of Work to be performed under a Proposed Contract Change or Change Order Request, Contractor shall provide a separate Notice of Delay (in accordance with Subsection 7.02.K) prior to submitting a PCC or COR time extension proposal. Failure of Contractor to provide said Notice of Delay in accordance with Subsection 7.02.K, or failure Contractor to provide the supporting documentation required under Subsection 7.02.C, within the 14-Day period provided in Subsection 6.02.B, or within seven days after submission of a COR, will result in Contractor waiving its right for additional time.

C. Documentation Required. At minimum, Contractor shall submit to the City a CPM time impact evaluation using sub-network or fragmentary network and including a written narrative and a schedule diagram or other written documentation acceptable to the City, showing the detailed work activities involved in a change that may affect the Contract Time and impact of the change on other Work and activities of the proposed schedule adjustment. This sub-network shall be tied to the complete progress schedule network with appropriate logic so that a true analysis of critical path can be made.

D. Extensions of Time Do Not Effect Warranty.

1. If the City agrees to extend Contract Time, such extensions shall in no way release any guarantees or warranties or shorten any guaranty or warranty period given by Contractor pursuant to the provisions of the Contract Documents, nor shall such extension of time relieve or release the sureties on the bonds executed pursuant to said provisions.
2. The sureties in executing such bonds shall be deemed to have expressly agreed to any such extension of Contract Time.
3. The length of any extension of time shall be limited to the extent that the commencement, performance and completion of the Work are delayed by the event as determined by the City in accordance with San Francisco Administrative Code section 6.22.H.2.d.

E. No Waiver of Liquidated Damages. Granting of an extension of Contract Time because of Unavoidable Delays shall in no way operate as a waiver on the part of the City of the right to collect liquidated damages for other delays or to collect other damages or to pursue other rights and interests to which the City is entitled.

F. Proof Required. If Contractor, any Subcontractor of any tier, or any Supplier of any tier seek an extension of Contract Time under the provisions of this Section 7.02 (or other Contract provision), Contractor and its Subcontractor or Supplier shall submit justification for the extension of the time requested and otherwise comply with all provisions of these Contract Documents with respect to requests for extensions of time. In no event shall such extensions of Contract Time be granted subsequent to the date of Final Completion.

G. City's Sole Negligence. Neither this Section, nor any other provision of the Contract Documents, is intended by the Parties to be contrary to any express provision of law. The Parties specifically agree, acknowledge, and warrant that neither this provision nor any other provision of the Contract Documents has for its object, directly or indirectly, the

exemption of the City, City representatives, the City's consultants, and their respective directors, officers, members, employees and authorized representatives from responsibility of their own sole negligence, violation of law or other willful injury to the person or property of another.

H. Unavoidable Delays. In accordance with San Francisco Administrative Code Section 6.22(h)(2)(C), and subject to the SFMTA's approval, Contractor will be entitled to relief for Unavoidable Delays only as provided below. In each case, Contractor must establish for the SFMTA that the interruption (1) meets the definition of Unavoidable Delay (as defined in Section 1.01), and (2) extends the most current date for Substantial Completion or intermediate Milestone for which liquidated damages apply. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed delays within the control of Contractor (i.e., Avoidable Delays).

1. **Non-compensable Delay/Time Extension.** Contractor will be entitled to a non-compensable extension of Contract Time only for the following types of Unavoidable Delay:
 - a. Acts of God;
 - b. Adverse Weather conditions, as defined in Section 7.02(l), and in excess of the number of days specified in the Supplemental Provisions;
 - c. fire;
 - d. war, domestic or foreign terrorism ;
 - e. riots or insurrections;
 - f. epidemics or quarantine restrictions;
 - g. labor disputes, including strikes, lockouts, sit-downs, and slowdowns, provided that: (i) whenever Contractor has knowledge that any actual or potential labor dispute is delaying or is threatening to delay the timely performance of the Contract, Contractor shall immediately give to the City written notice of the dispute, including all relevant information with respect thereto; and (ii) Contractor has taken all "appropriate measures" to eliminate or minimize the effect of such labor dispute on the current, City-approved Project Schedule, including, without limitation, promptly seeking appropriate injunctive relief, filing appropriate charges with the National Labor Relations Board under the applicable provisions of the Labor Management Relations Act of 1947 (as amended), filing appropriate damage actions, establishing a reserved gate, seeking other sources of labor supply or service, or any other measures that may be appropriately utilized as deemed by the City to limit or eliminate the effect of the labor dispute on the Work. To the extent Contractor fails to initiate appropriate measures, it shall not be entitled to an extension of Contract Time. In addition, any delay impact on the progress schedule caused by said failure to initiate appropriate measures will be considered a Contractor-caused delay under any and all applicable provisions of the Contract Documents;
 - h. government embargoes that affect Contractor's supply of fuel or Materials for the Project;

- i. adoption by the City, State of California, or United States of a law, including a statute, code, regulation, ordinance, rule, order, or decree, after the Effective Date of this Agreement that has a material, adverse effect on the prosecution of the Work, so long as the law is materially inconsistent with the law in effect on the Effective Date;
- j. prevention of Contractor from commencing or prosecuting the Work because of the acts of third parties, excepting Contractor's Subcontractors or Lower-Tier Subcontractors; and
- k. a utility owner's failure to cooperate with Contractor in providing or performing services required for Contractor to complete the Work. In this context, a utility owner shall mean the owner or operator of any utility, including privately and publicly held entities.

2. **Compensable Delay/Time Extension.** Contractor will be entitled to a compensable extension of Contract Time only for the following types of Unavoidable Delay:

- a. changes in the Work ordered by the City insofar as they necessarily require additional time in which to complete the Work; and
- b. the prevention by the City (acting as a Party) of Contractor from commencing or prosecuting the Work.

3. **Concurrent Delay.** Contractor will be entitled to a non-compensable extension of the Contract Time to the extent that a City-caused delay is concurrent with either a Contractor-caused delay or a non-compensable Unavoidable Delay.

I. **Adverse Weather Delays.**

- 1. Adverse weather shall mean rain, windstorm, flood, or other natural phenomenon that: (a) occurs at the Site; (b) exceeds the anticipated number of Days of inclement weather provided in Subsection 5, below; and (c) Contractor proves was the actual and proximate cause of delay to the Work that Contractor could not by due diligence have reasonably avoided or mitigated.
- 2. Adverse weather shall not be a sole reason for the granting of a non-compensable extension of Contract Time, and Contractor shall make every effort to mitigate the impact of adverse weather and to continue the Work under prevailing conditions. Such mitigation efforts by Contractor shall include, but are not limited to: providing temporary gravel roads; installing a rain dewatering system; protecting interior and exterior areas exposed to rain, wind, and extreme temperatures; and providing temporary heat where required for Work to proceed without delay..
- 3. The City may grant a non-compensable extension of Contract Time (as Unavoidable Delay) for each Day of adverse weather that is so severe as to prevent Contractor from performing work, provided Contractor made reasonable efforts to perform Work during adverse weather and to avoid the impacts of adverse weather to its schedule. If adverse weather prevents Contractor from proceeding with at least 75 percent of the scheduled labor, material, and equipment resources for at least five hours per Day on activities shown in the critical path on the most current City-

approved progress schedule, the delay will be classified as an Unavoidable Delay, and Contractor will be granted a non-compensable day-for-day extension of Contract Time. Contractor shall obtain the Engineer's approval before suspending Work due to adverse weather conditions, and the City shall not be obligated to grant time extension(s) for such Days for which Contractor has not obtained the Engineer's approval.

4. Regardless of the type and severity of the adverse weather, Contractor shall be responsible for all costs of rescheduling Work, redirecting forces and resource, and other efforts to mitigate the impacts of adverse weather to the progress schedule.
5. Contractor's Baseline Schedule shall incorporate allowance for the anticipated number of Days of inclement weather as specified below. Contractor shall plan the Work to allow for the following number of days of inclement weather during Regular Working Hours for which Contractor shall not claim Unavoidable Delay:

Month	Rain Days
January	3
February	3
March	2
April	1
May	0
June	0
July	0
August	0
September	0
October	1
November	1
December	3

- a. Contractor's progress schedule shall incorporate prudent allowance for the anticipated number of Days of inclement weather specified herein.
- b. The Contract Time allowed for completion of Work specified in the Special Provisions regarding Contract Time and Liquidated Damages is predicated on the anticipated number of Days of inclement weather specified herein.
- c. Contractor shall not be entitled to receive a time extension related to weather until the anticipated number of Days specified herein for the month of occurrence of the inclement weather event has been exceeded.

- d. If there are months with less than the anticipated number of inclement weather days specified herein, the City reserves the right to transfer the unused inclement weather Days to other months of the Contract Time for which Contractor has requested a time extension because of adverse weather.
- e. If there is a month with more than the anticipated number of inclement weather Days specified herein, and Contractor has requested an extension of Contract Time because of adverse weather, the City reserves the right to transfer unused inclement weather Days from other months of the Contract Time to the month in question. Contractor shall not be entitled to receive a time extension related to weather until the anticipated number of Days specified herein for the month of occurrence of the inclement weather event, plus any inclement weather Days transferred by the City from other months of the Contract Time, has been exceeded.

J. **Avoidable Delay.** The term "Avoidable Delay" shall include, but is not limited to, the following:

- 1. Any Contractor-caused delay; or
- 2. Any delay in the performance of parts of the Work, which may in itself be Unavoidable Delay, but which does not necessarily prevent or delay the performance of other parts of the Work, nor delay the date of Substantial Completion based on the specified limits of Contract Time; or
- 3. Any delay caused by the untimely review by Contractor of the Contract Drawings and Specifications (refer to Section 3.02); or
- 4. Any delay caused by Contractor's untimely submission of a cost proposal or time extension proposal or other documentation required under Section 6.02 or Section 7.02; or
- 5. Any delay arising from an interruption in the performance of the Work resulting from a reasonable interference from other contractors employed by the City, but does not delay the date of Substantial Completion based on the specified limit of Contract Time; or
- 6. Contractor shall not be entitled to, and hereby conclusively waives, any right to recovery of compensation, costs, or damages for delay, disruptions, hindrances or interferences (including, without limitation, interruption of schedules, extended, excess of extraordinary field and indirect overhead costs, loss of productivity and the impact, ripple or cumulative effect on other Work) that are the result of Avoidable Delay.

K. **Notice of Delay.**

- 1. Pursuant to San Francisco Administrative Code section 6.22.H.2.d, Contractor shall upon its knowledge of an anticipated delay to the Work promptly notify the Engineer in writing, of all anticipated delays in the prosecution of the Work and, in any event, within 24 hours of the occurrence of a delay. The SFMTA may take steps to prevent the occurrence or continuance of the delay and the SFMTA may determine to what extent Substantial Completion is delayed thereby.
- 2. The Notice of Delay described in the preceding Subsection may constitute an application for an extension of Contract Time and payment for a

compensable extension of Contract Time if the notice: (a) requests such time extension; (b) specifies whether the request is for a compensable or non-compensable extension of Contract Time; (c) sets forth Contractor's estimate of the additional time required together with a full explanation of the causes (with supporting documents) of the Unavoidable Delays necessitating such extension; and (d) meets all requirements for a Notice of Potential Claim as set forth in Section 13.03. If such information is not available to be included with the Notice of Delay, the required information and supporting documentation must be submitted within six Days of Contractor's submission of said notice.

3. The City's determination of whether an extension of Contract Time will be granted and the extension is compensable or noncompensable will be based on Contractor's demonstration to the City's satisfaction that such Unavoidable Delays will extend Contractor's current critical path on the current, City-approved updated progress schedule or require the formulation of a new extended critical path.
4. If Contractor does not submit a notice as set forth in Subsection 7.02.K.2, above, Contractor thereby admits the occurrence had no effect on the length of its duration of Work and no extension of time is necessary, and Contractor understands and agrees that no extension of Contract Time or adjustment of the Contract Sum will be granted by the City.

L. Acceleration.

1. If, in the opinion of the City, Contractor falls behind schedule according to Contractor's most current and accepted update of the progress schedule submitted as set forth in Technical Specifications (Division 1), regarding Scheduling of Work (or similar Specification), or if Contractor delays the progress of other contractors, and is not entitled to an extension of time as provided in these Contract Documents, Contractor shall take some or all of the following steps to improve its progress, at no additional cost to the City, and shall submit operational plans to the City to demonstrate the manner in which the desired rate of progress will be regained:
 - a. Increase construction manpower in such quantities and crafts as will substantially eliminate the backlog of Work;
 - b. Increase, when permitted in writing by the City, the number of working hours per shift, shifts per or the number of hours or Days in which Contractor is permitted to perform Work, or the amount of construction equipment or any combination of the foregoing, sufficiently to substantially eliminate the backlog of Work;
 - c. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities;
 - d. Expedite delivery of Materials and equipment, by use of air freight or other means;
 - e. Accelerate the priority of manufacture, fabrication and shipment preparation of Work on order with supplier(s) should such priority lists exist as a normal course of its business; and
 - f. Any other means deemed appropriate by the City.
2. The City may direct Contractor to take steps enumerated in Subsection 7.02.L.1 to accelerate the Work for the convenience of the City

and if Contractor is not at fault. If the Engineer directs Contractor to take said measures, the City will reimburse Contractor for its reasonable costs of complying. In order to facilitate reaching an agreement, Contractor shall cooperate and submit estimates in such detail as necessary to substantiate Contractor's proposed price for accelerating the completion of the Work. If Contractor and the Engineer fail to agree upon the amount of an adjustment for accelerating the Work, such adjustment shall be determined as follows:

- a. For overtime or additional shifts of work required by the City beyond that provided in the Contract Documents, the City will pay 110 percent of the difference between the labor cost at straight time rates and such cost at the occasioned premium and differential rates computed on a time and Materials basis, for the labor force engaged in such overtime work to compensate for the costs of such overtime or additional shifts.
- b. For equipment and labor required by the City beyond that provided in the Contract Documents, the City will pay an additional amount equal to ten percent of the cost of such additional equipment and labor, computed on a time and Material basis, to compensate for the employment of the additional equipment and labor.

7.03 LIQUIDATED DAMAGES

A. Determination of Damages. By entering into this Contract, Contractor agrees that in the event completion of this Contract is delayed beyond the Contract Time or the scheduled Milestone completion date(s) stated in the Project Schedule (as provided in the Special Provisions), as extended for Unavoidable Delays, City will suffer actual damages by that of breach of the Contract by Contractor. The actual fact of the occurrence of damages and the actual amount of the damages which the City would suffer if the Work is not completed within the specified limits of Contract Time are dependent upon many circumstances and conditions which could prevail in various combinations and would be impracticable and extremely difficult to determine the actual damages at the time of such delay. Damages which the City would suffer in the event of delay include, but are not limited to, costs of renting equivalent space, expenses of prolonged employment of an architectural, engineering and construction management staff comprised of both City staff and consultants; costs of administration, inspection and supervision; loss of efficiency and productivity to the construction of other parts of the Project, impacts to other projects and work performed by other contractors, and the loss suffered by the public within the City and County of San Francisco by reasons of the delay in the construction of the Project to serve the public at the earliest possible time.

Contractor therefore agrees that the sum set forth in the Special Provisions per Day for each and every calendar Day of delay of Substantial Completion of the Work or identified Milestone for completion of an identified portion of the Work beyond the scheduled completion date (as that may be modified in accordance with the Contract Documents), as adjusted for Unavoidable Delays, is not a penalty but is a reasonable amount that approximates the value of said damages the City will incur arising from or otherwise related to said delay, as estimated under the circumstances existing at the time the Contract is awarded.

B. Calculation of Damages.

1. From NTP to Substantial Completion. When the actual progress of the Work indicates that Substantial Completion of the Work or identified

Milestone may be delayed beyond the scheduled relevant completion date, as extended for Unavoidable Delays, as provided in the Special Provisions, a sum representing the projected liquidated damages shall be deducted from any money due to Contractor. If subsequent to the withholding of such projected liquidated damages, the progress of the Work indicates that the number of Days relative to such withheld amount is reduced or eliminated, the corresponding amount will be paid to Contractor at the time of the next payment.

2. From Substantial Completion to Punch List. Contractor and City agree that the amount of liquidated damages set forth in the Special Provisions represents the Parties' reasonable estimate of the approximate damages which the City will sustain for each and every Day of delay beyond the number of Days specified in Special Provisions for completing the Punch List of remedial Work and achieving Final Acceptance (as such date may be modified in accordance with the Contract Documents).
3. Agreement to Pay. It is therefore agreed that Contractor shall pay such amount of liquidated damages as specified in Special Provisions, and in case such amount is not paid, Contractor agrees that the City may deduct the amount therefrom from any money due or that may become due Contractor under the Contract. Should the money due or to become due to Contractor be insufficient to cover such agreed liquidated damages, then Contractor forthwith shall pay the remainder to the City.

C. Payment of Damages.

1. Should Contractor become liable for liquidated damages, the City, in addition to all other remedies provided by law, shall have the right to withhold any and all retained funds as provided in Section 9.09 which would otherwise be due or become due Contractor until the liability of Contractor for liquidated damages has finally been determined.
2. The City shall have the right to use and apply retained funds, in whole or in part, to reimburse the City for all liquidated damages due or to become due to the City. To satisfy assessed liquidated damages, the City may by notice to the relevant escrow agent recall funds held in escrow in lieu of retention, as provided in Public Contract Code Section 22300. Any remaining balance of such retained percentages shall be paid to Contractor only after discharge in full of all liability incurred by Contractor. If the retained percentage is not sufficient to discharge all such liabilities of Contractor, Contractor and its sureties shall continue to remain liable to the City until all such liabilities are satisfied in full. Should the retention of moneys due or to become due to Contractor be insufficient to cover such damages, Contractor shall pay forthwith the remainder to the City.

7.04 CONTRACTS AWARDED IN CONSIDERATION OF RELATIVE TIME ESTIMATES OF BIDDERS FOR COMPLETION OF THE WORK

When any award has been made in consideration, in whole or in part, of the relative time estimates of Bidders for the completion of the Work, the provisions of Subsections 7.02.H (Unavoidable Delays), 7.02.J (Avoidable Delays), and 7.02.L (Acceleration) shall not apply, and no extension of time may be granted on such contracts beyond the time specified for completion, unless the liquidated damages for each Day the Work is not completed beyond the specified time shall be collected; provided, however, that this provision shall not apply to Unavoidable Delays due to Acts of God.

ARTICLE 8 -- INSPECTION AND CORRECTION OF WORK

8.01 UNCOVERING OF WORK

A. No Work or portion of Work shall be covered until inspected by the City or other public authorities having jurisdiction.

B. If any part of the Work is covered contrary to the request or direction of the City Representative or other public authority having jurisdiction, or contrary to the requirements of the Contract Documents, Contractor must upon written request by the City, uncover it for inspection by the City or other public authorities having jurisdiction and subsequently cover the Work in accordance with the requirements of the Contract Documents without adjustment to the Contract Time or Contract Sum. The provisions and obligations set forth in this Section shall apply even if the City or other public authorities having jurisdiction ultimately determine (after uncovering and inspection) that the underlying Work in question conforms to the requirements of the Contract Documents.

C. Should the City or other public authorities having jurisdiction wish to either (1) re-inspect a portion of the Work that has been covered by Contractor in compliance with Subsection 8.01A, above, or (2) inspect a portion of the Work that has been covered by Contractor that is not required by the Contract Documents to be observed or inspected prior to its being covered and which the City or other public authorities having jurisdiction did not specifically request to observe prior to its being covered, Contractor shall uncover the applicable portion of the Work upon written request. If the City or other public authorities having jurisdiction determine that the Work uncovered conforms to the requirements of the Contract Documents, then the City will pay the costs of uncovering and replacement of the cover through a Change Order and will adjust the Contract Time by Change Order if the uncovering and replacement Work extends the most current Substantial Completion or Final Completion date, as applicable. If, however, the City or other public authority having jurisdiction determine that the Work uncovered does not conform to the requirements of the Contract Documents, then Contractor shall pay the costs of uncovering and replacement and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.

8.02 TESTS AND INSPECTIONS

A. Contractor shall be responsible for quality control inspections, testing, and examination of all Contractor-furnished (including suppliers and Subcontractors) Materials, equipment and Work, including issuing test and inspection reports, certificates of compliance, and Punch Lists. Contractor shall perform all material, mechanical and electrical assembly, dimensional and operational tests to confirm that Equipment meets the requirements of the Contract Documents and all applicable Codes and standards. Contractor shall reject any Contractor-furnished material, Equipment or Work that does not meet the Technical Specifications, or that was not inspected, tested, or examined in full compliance with the applicable standards and Technical Specifications. Contractor shall be responsible for rectifying all defects revealed as a result of the above. Contractor shall provide to the Engineer copies of all reports, test results, and quality control documentation relating to the Work. All testing and inspection of the Work required by the Contract Documents shall be arranged and paid for by Contractor through an independent testing laboratory, unless specifically indicated in the Contract Documents to be the responsibility of the City or other authority having jurisdiction.

B. Special inspections to be performed by the City as specified in the Contract Documents or as required to comply with applicable Codes or directives and requirements of other agencies that have jurisdiction shall be performed at the City's expense. Contractor shall give the Engineer, the City's independent testing laboratory, special inspectors, and

representatives from other authorities having jurisdiction a minimum of ten Working Days notice of when and where such special inspections are required, so the City may arrange for the appropriate City personnel, consultants, inspectors, and representatives from other public authorities having jurisdiction, to be present to perform the necessary inspections or tests. The City reserves the right to modify the scope of, or to reassign, any of the testing and inspection services specified in the various Sections of the Contract Documents to be performed by a testing agency or consultant retained by the City in connection with the Work.

C. If the City or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included in Subsection 8.02.A, the City will order the performance of such services by qualified independent testing agencies, or consultants as may reasonably be required. The City will bear such costs except as otherwise provided in Subsection 8.02.D.

D. If such testing, inspection or approval reveals that the part of the Work tested does not comply with the requirements of the Contract Documents, Contractor shall bear all costs made necessary by such failure including costs of repeated procedures and compensation for the City's additional testing and inspection services and expenses.

E. If the City's observation of any inspection or testing undertaken pursuant to this Section 8.02 reveals a failure in any one of a number of identical or similar items or elements incorporated in the Work to comply: (1) with the requirements of the Contract Documents or (2) with applicable Codes or directives or requirements of any public authority that has jurisdiction over the Work, the City will have the authority to order inspection and testing of all such items or elements of the Work, or of a representative number of such items or elements of the Work, as it may consider necessary or advisable. Contractor shall bear all costs for that testing, including reimbursement to the City for the City's additional testing and inspection services if any are required, made necessary thereby. However, neither the City's authority to act under Subsection 8.02.C nor any decision made by the Engineer in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the City to Contractor, to any Subcontractor, or to any of their agents or employees, or any other person performing any of the Work.

F. Neither observation by the City nor inspections, tests, or approvals by the City's inspectors or testing agencies and consultants, or by other public authorities having jurisdiction, shall relieve Contractor from Contractor's obligation to perform and provide quality control services to assure that the Work conforms to the requirements of the Contract Documents.

G. Unless otherwise required by the Contract Documents, required certificates of testing, inspection or approval shall be secured by Contractor and furnished to the City in accordance with the Technical Specifications.

H. Contractor shall provide promptly all facilities, labor, equipment and material reasonably needed for performing such safe and convenient inspection and test as may be required by the City. Tests or inspections conducted pursuant to the Contract Documents will be made promptly to avoid unreasonable delay to completing the Work in accordance with the Project Schedule. The City reserves the right to charge to Contractor any additional cost of inspection including travel, transportation, lodging, etc. or test when the Work, material or workmanship is not ready for testing or inspection at the specified time.

I. In order that the Engineer may determine whether Contractor has complied or is complying with the requirements of the Contract not readily enforceable through inspection and tests of the Work and Materials, Contractor shall at any time when requested submit to the Engineer properly authenticated documents or other satisfactory proof of its compliance with such requirements.

J. Failure or neglect on the part of the City or any of its authorized agents or representatives to inspect, observe, discover, condemn or reject Non-conforming Work or defective materials shall not be construed:

1. To imply acceptance of such Nonconforming Work or materials; or
2. As barring the City at any subsequent time from the recovery of money needed to build anew all portions of such Non-conforming Work; or
3. To relieve Contractor from the responsibility of correcting Non-conforming Work or materials.

8.03 CORRECTION OF NON-CONFORMING WORK

A. The City shall have the sole and unfettered authority to disapprove or reject Non-conforming Work. Upon receipt of written notification from the City that Work or Materials are Non-conforming Work, Contractor shall without delay, and in no event longer than ten Days from the date of the notice, remove same from the Site and replace it promptly with Work and Materials that conform to the Contract Documents, regardless of when the Non-conformance is determined. Contractor shall pay all claims, costs, losses, and damages, including the City's expenses (at the labor rates included in the contracts between the City and the City's testing and inspection services) of removal and replacement including but not limited to all costs of repair or replacement of work of others.

B. Failure or neglect on the part of the City or any of its authorized agents or representatives to condemn or reject Non-conforming Work or defective Materials shall not be construed:

1. To imply acceptance of such Non-conforming Work or Materials; or
2. As barring the City at any subsequent time from the recovery of money needed to build anew all portions of such Non-conforming Work; or
3. To relieve Contractor from the responsibility of correcting Non-conforming Work or Materials.

C. If Contractor fails to correct Non-conforming Work or proceed with corrections within ten Days of the date of written notification from the City, the City may correct the Non-conforming Work in accordance with Section 2.04 or may remove it and store the salvageable Materials and equipment at Contractor's expense. If Contractor does not pay the costs of such removal and storage within five Working Days after written notice, the City may sell, auction, or discard such Materials and equipment. The City will credit Contractor's account for the excess proceeds of such sale, if any. The City will deduct from Contractor's account the costs of damages to the Work, rectifying the Non-conforming Work, removing and storing any salvageable Materials and equipment, and discarding the Materials and equipment that cannot be salvaged, if any. If the proceeds fail to cover said costs and damages, the Contract Sum shall be reduced by the deficit. If the current Contract unpaid balance and retention is insufficient to cover such amount, Contractor shall reimburse the City.

D. Payment to Contractor does not constitute acceptance of Work by the City. Neither payment nor any provision in these Specifications shall relieve Contractor from responsibility for correction of the Non-Conforming Work, or replacement or of faulty Materials, and unless otherwise specified, Contractor shall remedy any defects due thereto and pay for any damages to other work resulting therefrom. The Engineer shall give notice of observed defects with reasonable promptness. All questions arising under this Section shall be administratively determined by the Engineer.

E. Should Contractor fail to make necessary corrections promptly or should the exigency of the situation require immediate repairs before Contractor can be notified, SFMTA

shall have the right to make the necessary repairs or replacements at the expense of Contractor.

F. If variations from these requirements should be established elsewhere in these Technical Specifications for specific parts of the Work and Materials, such variations shall not affect the application of this Section to other work and Materials.

8.04 CONTRACTOR'S OBLIGATION TO CORRECT WORK AND WARRANTY PERIOD

A. Contractor shall repair or replace Non-conforming Work and any damage resulting from such Non-conforming Work promptly at no additional cost to the City, whether due to: (1) faulty Materials or workmanship; or (2) defective installation by Contractor of Materials or equipment manufactured by others; or (3) disturbance of, or damage to, City improvements by Contractor's operations contrary to the Specifications; or (4) other failure to conform to the requirements of the Contract Documents. Such repair or replacement shall commence within seven Days of the date of the City's written notification directing Contractor to correct such Non-conforming Work and shall forthwith be diligently prosecuted to completion. Contractor shall repair or replace Non-Conforming Work and any damage resulting therefrom in any part of the Work upon notice from the SFMTA at any time prior to the City's issuance of a notice of Final Completion of the Work and continuing for two years following the date of the Notice of Substantial Completion.

B. This requirement to correct Non-conforming Work shall be extended and shall continue until one year after the date of correction of repaired or replaced Items.

C. This requirement to correct Non-conforming Work and all similar requirements applicable to Work performed by Subcontractors of any tier and equipment provided by suppliers used in or as a part of the Work (whether on equipment of the nature above specified or otherwise) shall inure to the benefit of the City without necessity of separate transfer or assignment thereof.

D. The remedies provided for in this Section 8.04 shall not be restrictive but shall be cumulative and shall be in addition to all other legal remedies the City may possess with respect to latent defects or frauds.

8.05 ACCEPTANCE OF NON-CONFORMING WORK

If, in the sole and unfettered judgment of the City, it is undesirable or impractical to replace or repair any defective or Non-conforming Work, the City may accept such Non-conforming Work in exchange for a reduction in the Contract Sum by such amount as the City or its authorized representatives deem equitable, or Contractor shall rebate moneys previously paid by the City.

ARTICLE 9 -- PAYMENTS AND COMPLETION

9.01 CONTRACT SUM

A. Payment to Contractor of the Contract Sum shall be full compensation for: (1) furnishing all labor, Materials, equipment and tools necessary to the Work; (2) performing and completing all Work in accordance with the requirements of the Contract Documents; and (3) all expenses incurred by Contractor for any purpose incidental to performing and completing the Work (Incidental Work).

B. Whenever the Contract Documents specify that Contractor is to perform Work or furnish Materials of any class for which no price is fixed in the Contract, such Work shall be performed or such Materials furnished without extra charge, allowance or direct payment of any sort, and that the cost of performing such Work or furnishing such Materials is included as Incidental Work in Contractor's Total Bid Price (Contract Sum).

C. The Contract Sum is not a guaranteed amount, but may be amended by fully executed Contract Modification. The Contract Sum must reasonably correspond to the value of the Work to be performed under the Contract, but the Contract Amount shall not be deemed to describe or otherwise delineate the Scope of the Work Contractor shall perform under the Contract.

9.02 SCHEDULE OF VALUES FOR LUMP SUM WORK

A. Within 30 Days after receipt of the Notice to Proceed, or as otherwise specified in the Special Provisions or Technical Specifications (Division 1), Contractor shall submit a detailed cost breakdown of each of the lump sum Items in the Schedule of Bid Prices, including Alternate Bid Items selected by the City, coordinated with the progress schedule. This breakdown shall be referenced as the Schedule of Values, and when accepted by the City, shall serve as the basis for progress payments for lump sum Items. No progress payments will be made on account of lump sum Items until the City has reviewed and accepted Contractor's Schedule of Values.

1. The specific format, detail and submittal requirements for the Schedule of Values shall be as specified in Technical Specifications (Division 1) or as directed by the City to facilitate and clarify progress payments to Contractor for completed Work.
2. The sum of the individual costs listed in the Schedule of Values for each lump sum Item shall equal the lump sum price Bid therefor under the Bid Item named in the Schedule of Bid Prices included with Contractor's Bid.

B. The total cost of performing each lump sum Item, including all labor, material, equipment, fixed cost elements, incidental expenses, and overhead and profit, shall be included in the prices stated on Contractor's Schedule of Values. Unless otherwise provided in the Contract Documents, Contractor's overhead, profit, and other similar costs, shall be included and prorated through all Items so that the sum of the cost for all Items shall equal Contractor's Total Bid Price. The City shall not make separate payment for insurance and/or bonds provided by Contractor. Costs for said insurance and bonds shall be included in payments for mobilization and demobilization, as provided in the Technical Specifications.

C. The City will review and return Contractor's Schedule of Values with comments within seven Days of receipt. Contractor shall make all corrections requested by the City and resubmit for approval.

1. The City shall be the sole judge of the sufficiency in detail and proper proportioning of Contractor's Schedule of Values.
2. Contractor's Schedule of Values will be acceptable to the City as to form and substance if it provides a reasonable allocation of Contractor's Bid amount to component parts of the Work.

D. Upon concurrence by the City, a written formal approval of Contractor's Schedule of Values will be issued. If the City later determines that the Schedule of Values is insufficient or incorrect, further adjustment shall be made as specified in Subsection 9.02.C.

9.03 DETERMINATION OF QUANTITIES FOR PAYMENT

A. The quantity of Work to be paid to Contractor under any item for which a unit price is fixed in the Contract shall be the number, as determined by the Engineer, of units of Work satisfactorily completed in accordance with the Specifications. Unless otherwise provided, the determination of the number of units of Work so completed will be based, so far as practicable, on actual measurement or count, within the limits or lines indicated on the Drawings or specified, and no payment will be made for work done or effort expended outside of such limits and lines. No allowance will be made for tolerances indicated or specified.

B. Measurement will be by the units in place or removed and shall be in accordance with this Section, except as otherwise required by other Sections of these General Provisions or the Special Provisions. Unless otherwise indicated, measurement for items, components, or work to be measured linearly will be taken along the centerline of the item in place.

C. Engineer's Measurements and Marks

1. Contractor shall keep the Engineer informed a reasonable time in advance of the times and places at which it wishes to perform Work, in order that necessary measurements for record and payment may be made with the minimum of inconvenience to the Engineer and of delay to Contractor. At the request of the Engineer, Contractor shall, without charge, provide workers from its force, and tools and materials, to assist the Engineer temporarily in making measurements and surveys and in establishing temporary or permanent reference marks. The marks shall be carefully preserved.
2. It may be necessary at times that a portion or portions of Contractor's Work be temporarily suspended, so that the Engineer may make measurements or surveys without interruptions or other interference that might impair the accuracy of the results. At any time, on request of the Engineer, Contractor shall temporarily suspend its Work to such extent as may be necessary for the purposes of the Engineer.
3. The City shall have no liability for the costs to Contractor any work, time required or delay occasioned by the Engineer's taking measurements, or by inspection, and no extension of Contract Time shall be granted or owed for such work, time or delays.

9.04 UNIT PRICE WORK AND ADJUSTMENTS IN QUANTITIES

A. **General.** Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Sum will be deemed to include for all Unit Price Work an amount equal to the product of the established unit price Bid for each Item of Unit Price Work times the estimated quantity of each Item as indicated in the Schedule of Bid Prices. The estimated quantities of unit price Items are not guaranteed and are solely for the purpose of comparing Bids and determining an initial Contract Total Bid Price. Determination of the actual quantities and classifications of Unit Price Work will be made in accordance with Technical Specifications (Division 1), and the Contract Sum will be adjusted based on the actual quantities of Work performed. Contractor's Bid must be balanced. Each unit price stated on the Schedule of Bid Prices shall be deemed to include an amount considered by Contractor to cover Contractor's Mark-up for overhead and profit as defined in Section 6.04. The City shall have no obligation to pay or liability for any additional compensation for unit price work.

B. **Quantity Increases.** Should the pay quantity of actual Work required under any Bid Item be, or be increased to, more than 125 percent of the quantity shown in the Schedule of Bid Prices, the City may request a reduction in the unit price bid for that particular Bid Item as applied to the Units in excess of 125 percent of the original number of units included in the Contractor's Bid. Such reduction in price will be negotiated in accordance with the provisions of Articles 6 and 9.

C. **Quantity Decreases.** Should the pay quantity of actual Work required under any Bid Item be, or be reduced to, less than 75 percent of the quantity shown in the Schedule of Bid Prices and the value of the depletion, based on Contract bid prices, exceeds \$2,000, Contractor may request an increase in the unit price bid for that particular Bid Item, but must prove to the SFMTA's satisfaction that any price increase was caused by the reduction in

quantity. Such increase in price, adjusted to compensate for fixed costs, will be negotiated in accordance with Articles 6 and 9.

1. Payment for the total pay quantity for such Bid Item will in no case exceed the payment which would have been made for 75 percent of the quantity set forth in the Schedule of Bid Prices at the original unit price therefor.
2. At the City's option, payment for the Work involved in such deficiency will be made on a Force Account basis as provided in Section 6.05 in lieu of adjusting the unit price in accordance with this Section.

9.05 ALLOWANCE

Progress payments on account of allowances named in the Schedule of Bid shall be made for such sums as may be acceptable to the City. Prior to final payment, an appropriate Contract Modification will be issued as directed by the Engineer to reflect actual amounts due Contractor and amounts to be credited to the City of on account of Work covered by allowances, and the Contract Sum will be adjusted accordingly.

9.06 MEASUREMENT

A. General

1. In addition to the general requirements in this Section, reference is made to the more specific requirements in other Sections of these General Provisions or the Special Provisions or Technical Specifications (Division 1) covering the methods of measuring and paying for particular Materials and types of work.
2. Except where payment for the Work is made at the lump sum or other set price bid for the particular item, payment shall be based on measurements of the completed Work in accordance with, and by instruments and devices calibrated to, United States Standard Measures, and the units of measurement for payment, and the limits thereof, shall be as shown on the Drawing or specified in the Special Provisions or the Technical Specifications, or in the absence thereof, as set forth in these General Provisions. The Engineer will make the measurements at no cost to Contractor except as otherwise specified.
3. In estimating progress payments and final quantities, all lengths and areas shall be based on horizontal measurements, unless otherwise specified. The polar planimeter may be used for measurement of areas in estimating quantities under the Contract.
4. Volumes of excavation and embankment, unless otherwise specified, shall be computed by the method of average end areas and appropriate horizontal distances.

B. Weight Measurements.

1. For Materials paid for by the ton, local Material or Materials not shipped by rail shall be weighed on platform scales furnished by Contractor or on public scales at the expense of Contractor. A ton shall consist of 2,000 pounds avoirdupois. The platform scales shall be of sufficient size and capacity to concurrently weigh the load and vehicle carrying the load. Contractor shall furnish the Engineer with a Certificate of Inspection from the Sealer of Weights and Measures of the County having jurisdiction, or from the Bureau of Weights and Measures of the State of California, attesting to the accuracy of the scales furnished by him/her; and further,

she/he shall furnish additional certificates as often as the Engineer may deem necessary to assure the continued accuracy of the scales; all at no cost to the City.

2. If Contractor elects to use public scales, they shall bear a current valid seal of approval of the Sealer of Weights and Measures.
3. Whenever material is weighed on scales used for any commercial purpose, the scales shall be operated by a weighmaster licensed in accordance with the provisions of Division 5, Chapter 7 of the California Business and Professions Code. Contractor shall furnish a weighmaster's certificate, or certified daily summary weigh sheets. A representative of the City may, at the discretion of the Engineer, be present to witness the weighing and to check and compile the daily record of such scale weights.
4. The City reserves the right to require that no weighing shall be done on scales furnished by Contractor or on public scales, except in the presence of an authorized representative of the City, and further reserves the right to check the tire weight of each truck used to haul Materials paid for by weight at any time specified by the Engineer.
5. The weight of aggregate, crushed rock, or aggregate base to be paid for by the ton will be determined by deducting from the weight of the Materials incorporated in the Work, the weight of water in the material at the time of weighing, in excess of that allowed by the Specifications.

C. Truck Measurements.

1. Materials specified to be measured by "Truck Measurement" or similar designation indicating that the Material shall be measured by volume in the transporting vehicles, shall be hauled in approved vehicles of such type that the actual cubic contents can be readily and accurately determined. Such vehicles shall be made available to the Engineer for the purpose of measurement prior to use. The water level volume of each truck body, to the top of sideboards, shall be determined by actual measurements checked and approved by the Engineer. Unless all such approved vehicles are of uniform capacity, each shall bear a plainly legible identification mark indicating the specific approved capacity.
2. All vehicles shall be loaded to at least the approved capacity. In the event of a controversy, and when requested by the Engineer, all loads under dispute shall be struck off to a level surface at the point of delivery.
3. Loads will be tallied by truck numbers and respective truck capacities, on the Site by the Engineer. All trucks shall be tallied and inspected before being dumped, and shall be dumped where directed.

D. Miscellaneous Measurements.

1. When concrete is specified in the Special Provisions to be paid for by volume, the volume shall be the actual volume within the neat lines of the structure shown on the Drawings. A deduction of one cubic foot of concrete will be made for each linear foot of piling, other than sheet piling, projecting into the concrete. No deduction will be made on account of the displacement of concrete by reinforcing steel, by structural steel shapes used in encasement work, by dowels, or unless otherwise specified in the Special Provisions, by conduits, raceways or ducts.

2. When steel, cast iron or other metals, or metal products, are specified in the Special Provisions to be paid for by weight, the weighing thereof shall be done on shop scales in the presence of the Engineer or his/her authorized representative. Payment will be made at the price bid per pound.

9.07 DELETED ITEMS

A. Should any Bid Item be deleted by Change Order in its entirety, the Contract Sum shall be reduced by the amount Bid for that Bid Item. Where a portion of the Work is deleted by Change Order, the reduction of the Contract Sum shall be computed on the basis of one or more of the following: (1) Unit prices stated in the Contract Documents; (2) Where unit prices are not applicable, a lump sum based upon the costs which Contractor would have incurred in performing the deleted portions of the Work, as calculated and documented in accordance with Article 6 of this Contract. Neither Contractor nor the Subcontractor shall receive a Mark-up on their respective lower-tier subcontractors to administer the credit Change Order. When both additions and credits are involved in any one Change Order, Contractor's Mark-up shall be computed on the basis of its Direct Costs and labor productivity for the net change in the quantity of the Work. (For example, if a Change Order adds 14 units on one Drawing and deletes five units on another Drawing, the Mark-up shall be based on the net addition of nine units.) No Mark-up will be given if the deductive cost exceeds the additive cost in a Change Order.

B. If the City issues written notice of deletion of a Bid Item after the commencement of such Work or after Contractor has ordered acceptable Materials for such Work which cannot be cancelled, or if part or all of such Work is not performed by Contractor because it is unnecessary due to actual Site conditions, payment will be made to Contractor for Direct Costs of such Work actually performed plus Mark-up for overhead and profit as provided in Section 6.04.

C. Contractor shall not be compensated for costs incurred after receipt of the City's written notice deleting the Bid Item.

D. Materials ordered by Contractor prior to the City's issuance of a notice of deletion and paid for by the City shall become the property of the City, and the City will pay for the actual cost of any further handling of such material. If the Materials are returnable to the vendor, and if the City so directs, the Materials shall be returned and Contractor will be paid only for the actual charges made by the vendor for returning the material including restocking charges.

9.08 PROGRESS ESTIMATES AND PAYMENTS

A. **General.** Progress payments will be made if so stipulated in the Contract Documents, otherwise, no payment will be made before all Work required under the Contract is completed. If the Contract provides for periodic progress payments, subject to the conditions set forth in these General Provisions, and subject to the authorization of the City or the authorized representatives of the City, payment shall be made upon demand of Contractor. The preparation of invoices and supporting documents are Incidental Work and included in the Contract Sum, and Contractor shall not receive additional compensation for the administrative or other costs incurred in preparing invoices, seeking compensation, or for complying with the requirements of this Section 9.08.

B. **Basis for Payment.** If the Contract provides for progress payments, on or about the 20th Day of each month, Contractor shall schedule a progress payment meeting. After the progress payment meeting(s), before the last day of each month, Contractor shall submit to the Engineer for review an Application for Progress Payment, on a form approved by the City and signed by Contractor, covering the Work completed by Contractor as of the date of the

Application and accompanied by such supporting documentation as specified in the Contract Documents.

1. Contractor shall make a good faith estimate the value of the Work completed, in due proportion to the whole amount of money, including payments previously made, that will have become due according to the Contract when all Work has been completed.
2. Unless otherwise specifically provided in the Special Provisions, no allowance will be made in these estimates for Materials or equipment not incorporated into the Work.
3. Progress payments made on the basis of Unit Price Work shall be based on the number of units of Work satisfactorily completed as determined by the City and the unit prices Bid by Contractor, as they may be adjusted as provided in Article 6 and Sections 9.03 and 9.04 for the actual quantities of Work performed.
4. The monthly value of lump sum Work shall be estimated by Contractor pursuant to the Schedule of Values prepared in accordance with Section 9.02.
5. The Application for Progress Payment shall identify the amount of Contractor's total earnings to date.

C. City's Review of Payment Application. After receipt of an Application for Progress Payment, the Engineer will, on or about the last Day of each month, review Contractor's Application for Progress Payment, and make an estimate of the value of the Work completed by Contractor in the performance of the Contract. The first such estimate will be of the value of the Work completed after Contractor commenced the performance of the Contract, and every subsequent estimate, except the final estimate, will be of the value of the Work done after that included in the last preceding estimate, except as indicated for Unit Price Items or other items otherwise provided for in the Special Provisions. Monthly Applications for Payment shall be based on information developed at monthly progress meetings and shall be prepared by Contractor as specified in the Technical Specifications (Division 1). Submission of acceptable monthly progress schedule updates for same period as the Application for Progress Payment shall be a condition precedent to submitting the Application for Progress Payment. No partial progress payment shall be made to Contractor until all cost information requested by the City is submitted and reviewed. No inaccuracy or error in said monthly estimates shall operate to release Contractor or its sureties from damages arising from such Work or from the enforcement of each and every provision of the Contract Documents, and the City shall have the right to correct any error made in any estimate for payment.

D. Payment for Mobilization/Demobilization. Estimates of progress payments for mobilization/demobilization will be made as follows:

1. When the Engineer's estimate of the value of the Work completed, exclusive of mobilization/demobilization items other than Baseline Schedule, traffic regulation and allowances, is two percent or more of the total Baseline Schedule amount, 25% percent of the accepted value for mobilization/demobilization will be included in said estimate.
2. When the Engineer's estimate of the value of the Work completed, exclusive of mobilization/demobilization Items other than Baseline Schedule, traffic regulation and allowances, is five percent or more of the total Baseline Schedule amount, 50 percent of the accepted value for mobilization/demobilization will be included in said estimate.

3. When the Engineer's estimate of the value of the Work completed, exclusive of mobilization/demobilization Items, traffic regulation and allowances, is ten percent or more of the total Baseline Schedule amount, 65 percent of the accepted value for mobilization/demobilization will be included in said estimate.
4. When all required Contract Work, including all required testing, start-up work and all required training of City personnel, furnishing of all required Operations and Maintenance Manuals, is completed, 95 percent of the accepted value for mobilization/demobilization will be included in said estimate.
5. The remaining value for mobilization/demobilization shall be included in the final payment made pursuant to Section 9.18.

E. Payment for Traffic Regulation Work. Traffic regulation work satisfactorily performed shall be paid in proportion to the amount of on-Site construction Work completed during the payment period.

F. Submission of Electronic Certified Payrolls. No monthly progress payments will be processed until Contractor has submitted weekly certified payrolls to the City for the applicable time period, as required under Subsection 11.02.A. For contracts awarded on or after April 1, 2015, the SFMTA will not issue any monthly progress payment to the Contractor until Contractor has submitted weekly certified payrolls to both the California Department of Industrial Relations and to the City for the applicable time period. Effective January 1, 2016, the SFMTA will not issue any monthly progress payment until Contractor has also submitted weekly certified payrolls both to the California Department of Industrial Relations and to the City for the applicable time period. Contractor shall submit certified payrolls to the California Department of Industrial Relations in the manner specified by the DIR. Contractor shall submit certified payrolls to the City as specified in Section 11.02 below.

G. Unpriced Work. Whenever it is indicated on the Drawings or Technical Specifications that Contractor is to do Work or furnish Materials for which no price is fixed in the Contract, it is understood and agreed, that there is included in each lump sum, or unit price bid item, the entire cost of all Work incidental to the completion of that part of the Work covered by such lump sum, or unit price bid item, or if not directly incidental to any specific bid item, the cost thereof has been distributed among and is included in those Items deemed most appropriate by Contractor.

9.09 RETENTION AND ESCROW AGREEMENT

A. Retention.

1. As required by and in conformance with the procedures set forth in Section 6.22(J) of the Administrative Code, the City shall hold five percent in retention from each progress payment.
2. When the City determines that the Work is 98 percent or more complete, the City may reduce retention funds to an amount equal to 200 percent of the estimated value of work yet to be completed, plus any amounts necessary to cover offsets by the City for liquidated damages, defective Work, stop notices, forfeitures and other charges.
3. The City may release the balance of retention only upon the following conditions: (a) the Engineer has determined that the Work has reached Final Completion and the SFMTA has issued a notice of Final Acceptance, and (b) the Contract is free of offsets by the City for liquidated

damages and defective work and is free of stop notices, forfeitures, and other charges.

4. Contractor may apply for early release of retention for Work performed by (a) any subcontractor certified by the City as an LBE or (b) any subcontractor under a Contract to perform Work that will take more than two years to complete. Contractor shall make such application in writing and shall certify the following:
 - a. That the Work by the subcontractor is completed and satisfactory in accordance with the Contract Documents;
 - b. The total amount paid to the subcontractor by Contractor as of the date of the written request; and
 - c. The amount of retention associated with the Work performed by the subcontractor.
 - d. Contractor acknowledges and agrees that the release of retention under this subparagraph shall not reduce the responsibilities or liabilities of Contractor or its surety(ies) under the Contract or applicable law.

B. Escrow Agreement. In accordance with the provisions of the California Public Contract Code section 22300, Contractor will be permitted to substitute securities for any moneys withheld by the City to ensure performance under the Contract or place retained payments in an interest bearing escrow account, as provided below:

1. At Contractor's expense, Contractor shall enter into an escrow agreement with the Agency and a financial institution acceptable to the SFMTA and Contractor. The Escrow Agreement shall conform to the requirements of California Public Contract Code section 22300. The SFMTA will furnish Contractor with the Escrow Agreement forms to be used.
2. At the request and expense of Contractor, securities listed in California Government Code section 16430, bank or savings and loan certificate of deposits, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the City and Contractor which are equivalent to the amount withheld under the retention provisions of the Contract Documents shall be deposited with the City Controller who shall then pay such moneys to Contractor. Upon satisfactory completion of all Work under the Contract, the securities shall be returned to Contractor.
3. Before any progress payment or the final payment is made, Contractor may be required to submit satisfactory evidence that it is not delinquent in payments to its employees or creditors for labor and Materials incorporated into the Work, and that it is not delinquent in payments to its employees and/or creditors for labor and Materials included in the payments.
4. Contractor shall enter into an escrow agreement with the City specifying the amount of securities to be deposited, terms and conditions of conversion to cash in case of default of Contractor, and termination of escrow upon completion of the Contract. The SFMTA shall provide the form agreement to be used.

9.10 TITLE TO PROPERTY

A. Irrespective of the location of Property (as that term is defined below) or who may physically possess or exercise control over the Property, title to the Property shall vest in the City upon payment by the City of any Progress Payment in which Contractor seeks payment for Property acquired for and used in the performance of the Work or incorporated into the Work. Title to any Property acquired or produced before the Effective Date of the Contract shall vest in the City immediately upon the Effective Date and are chargeable to the Contract.

B. "Property," as used in this Section, includes all of the Items described below that are acquired or produced by Contractor and that are or should be allocable or properly chargeable to this Contract (under sound and generally accepted accounting principles and practices and applicable Codes) and that are to be used in the performance of the Work or incorporated into the Work.

1. Parts, Materials, inventories, and Work in process;
2. Special tooling and special test equipment to which the City is to acquire title under any other clause of the Contract;
3. Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under this Section; and
4. Drawings and technical data, to the extent Contractor or Subcontractors are required to deliver them to the City by other provisions of this Contract.
5. Specialized Equipment obtained by Contractor on behalf of the City.

C. To acquire for its own use or dispose of Property to which title is vested in the City under this Section, Contractor must obtain the Engineer's advance approval of the action and the terms. Contractor shall (1) exclude the allocable costs of the Property from the costs of performing the Contract, and (2) repay to the City any amount of unliquidated progress payments allocable to the Property. Repayment may be by cash or credit memorandum, or as otherwise approved by the Engineer.

D. Notwithstanding transfer of title of Property to the City, Contractor shall bear all costs security, storage and transportation and all risk of loss of the Property until the Agency's Final Acceptance of the Work. Contractor shall be responsible for insuring the Property against loss for 100 percent of the value of the Property until Final Acceptance of the Work.

E. All warranties and guarantees applicable to the Property shall commence and run as provided elsewhere in the Contract and shall not be triggered by the transfer of title. The requirements of the Contract, including all duties and liabilities of Contractor, shall continue after transfer of title as if no transfer had occurred. Contractor shall secure all Property in a manner and at a location agreed to in advance, in writing, by the City. Contractor shall repay the City an amount equal to the unliquidated progress payments that are based on costs allocable to Property that is damaged, lost, stolen, or destroyed.

F. Contractor shall prepare invoices for payment for Property in the same manner as it prepares Applications for Payment for the Work. Contractor shall maintain an accounting system and controls adequate for the proper administration of this Section.

G. No payment made for Work or Property or vesting of title of Property shall excuse Contractor from performance of obligations under this Contract or constitute a waiver of any of the rights or remedies of the parties under the Contract or under law.

H. The provisions of this Section apply equally to long-lead Items, if any identified in the Special Provisions.

9.11 PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK

A. The granting of any progress payment, or the receipt thereof by Contractor, shall not constitute acceptance of the Work or any portion thereof and shall in no way lessen the liability of Contractor to replace unsatisfactory Work or material, though the unsatisfactory character of such Work or Materials may not have been apparent or detected at the time such payment was made.

B. Partial Utilization (Owner's Beneficial Use) shall not constitute acceptance of any part of the Work.

9.12 SUMS CHARGED AGAINST CONTRACTOR

The City may withhold from any payment otherwise due Contractor such amounts as may be necessary to protect the City to ensure completion of the Work pursuant to the requirements of this Contract. The failure or refusal of the City to withhold any moneys from Contractor shall in no way impair the obligations of any surety or sureties under any bonds furnished under this Contract. If any payment or portion of payment is withheld by the City, Contractor will be notified in writing of the cause(s) of such action.

9.13 PAYMENT WILL BE MADE ONLY FOR APPROVED CHANGE ORDERS

Only Change Orders and undisputed portions of Unilateral Contract Modifications completely approved, executed, and certified by the City shall be included on the payment authorization, and only that portion of the Change Order Work actually performed shall be submitted for payment. Contractor shall submit a breakdown for each Change Order by clearly identifying Change Order number on Contractor's Application for Progress Payment.

9.14 PAYMENT AUTHORIZATION AND TIMELINE

A. The City will, after receipt of Contractor's Application for Progress Payment, approve such amount as the City determines is properly due.

B. Payment will be issued by the City based on the City's determination that the Work has progressed satisfactorily to the point stated in the Application for Progress Payment. The City is entitled to rely on statements made in Applications for Progress Payments that the Work for which compensation is sought has been performed as specified by the Contract.

C. Payment will not be a representation that the City has:

1. Inspected the Work exhaustively to check that the quality or quantity are in conformance to the requirements of the Contract Documents; or
2. Reviewed Contractor's means, methods, techniques, sequences or procedures of construction; or
3. Ascertained how or for what purpose Contractor has used money paid, or determined that title to any of the Work, Materials, or equipment has passed to the City free and clear of any liens.

D. The City shall endeavor to make progress payments for undisputed amounts within 21 Days, but no later than 70 Days, of receiving a payment request and the required documentation including, without limitation, certified payrolls and San Francisco Human Rights Commission program participation forms. In no event shall the City become liable for interest or other charges for late payment except as set forth in San Francisco Administrative Code section 6.22.J.6. No monthly progress payments will be processed until Contractor has submitted certified payrolls to the City for the applicable pay periods, as provided in Section 11.02.

9.15 PROMPT PAYMENT TO SUBCONTRACTORS

A. Contractor shall pay each of its Subcontractors within three Working Days after receipt of each progress payment from the City. Within five Working Days of such payment, Contractor shall provide the SFMTA with satisfactory evidence that it has promptly paid each Subcontractor for the Work that it has performed in that billing period. Failure to provide such evidence shall be cause for the SFMTA to suspend future progress payments to Contractor.

B. Within 30 Days of satisfactory completion of all Work required of the Subcontractor, Contractor shall release any retention withheld to the Subcontractor. A violation of the requirements of this Section shall constitute a violation of San Francisco Administrative Code section 6.22.Q. If Contractor does not pay a Subcontractor as required in this Section, Contractor shall pay directly to said Subcontractor a penalty of two percent per month of the amounts unpaid, as provided by Administrative Code section 6.22.Q.

C. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Contractor to a Subcontractor, the Contractor may withhold the disputed amount but shall pay the undisputed amount.

D. Contractor shall include these payment requirements in its subcontracts and shall require every Subcontractor of every tier to include these payment requirements in its subcontracts with lower tier Subcontractors.

9.16 WITHHOLDING PAYMENT

A. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect itself, up to a maximum of 125 percent of the estimated cost, as determined by the City, to cure or otherwise correct or account for Contractor's failure to pay its Subcontractors as required by this Contract.

B. The City may also decline to authorize payment based on subsequently discovered evidence, and the City may nullify the whole or a part of a payment previously issued, up to a maximum of 125% of the estimated cost, as determined by the City, to cure or otherwise correct or account for Contractor's failure to pay its Subcontractors as required by this Contract.

C. The City may withhold payment at any time if in the judgment of the Engineer, the Work is not proceeding in accordance with the requirements of the Contract, or Contractor is not complying with the requirements of the Contract.

D. In addition to the reasons set out in the preceding Subsections, the City may also decline to authorize payment based on subsequently discovered evidence, and the City may nullify the whole or a part of a payment previously issued, for one or more of the following reasons:

1. The City determines the existence of Non-conforming Work or completed Work that has been damaged, requiring correction or replacement.
2. Third party claims have been filed against the City alleging damages arising or likely arising from Contractor's activities, or there is reasonable evidence indicating probable filing of such claims.
3. The City determines that the Work cannot be completed for the unpaid balance of the Contract Sum.
4. The Contract Sum has been reduced by Change Orders.
5. Damage has occurred to the City or another contractor.
6. The City determines that the Work will not be completed within the Contract Time and that the current unpaid balance and retention will not

be adequate to cover actual or liquidated damages for the anticipated delay.

7. The City determines that Contractor persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, any of the grounds for default stated in Subsection 14.01.A).
8. The City determines that Contractor fails to submit timely PCC cost proposal breakdowns in accordance with the Contract Documents.
9. The City determines that Contractor fails to submit timely progress schedules, revised schedules, schedule updates and reports in accordance with the Contract Documents.
10. The City determines that Contractor fails to maintain timely updated Contract Documents or record documents.
11. The City determines that Contractor fails to submit certified payroll records in accordance with the Contract Documents.
12. The SFMTA Office of Contract Compliance determines that:
 - a. Contractor has not paid a Subcontractor amounts due and owing for Work performed and/or Materials incorporated into the Work (or long-lead items delivered to Contractor); and,
 - b. There is no dispute concerning the Work performed or Materials Supplied by the Subcontractor or amounts owing related to the Work that would excuse or otherwise justify nonpayment; and,
 - c. The unpaid Subcontractor has filed a stop notice with the City's Controller in accordance with the requirements of the California Civil Code.
13. In the Engineer's judgment, the amount of Work completed less those amounts previously paid cannot be determined by the procedures set out in Section 9.08.
14. The City determines that Contractor has failed or is failing to comply with any other requirements of the Contract Documents.

E. If the City does not authorize payment in the amount of the application, the City will notify Contractor of the reasons for withholding payment.

9.17 SUBSTANTIAL COMPLETION

A. Contractor shall notify the City in writing when Contractor considers that the Work has reached Substantial Completion and request that the City inspect the Work and prepare a Notice of Substantial Completion. Completion of start-up services; close-out of all Non-Compliance Reports; and submittal of warranties, guarantees, and record documents shall be a condition precedent to requesting an inspection for and the City's issuing a notice of Substantial Completion. Attached to Contractor's request for a Substantial Completion inspection shall be a preliminary Punch List items to be completed or corrected before Final Acceptance.

B. Within seven Days from receipt of Contractor's written notification, the City will make an inspection to determine whether the Work is Substantially Complete. If the City determines that the Work is not Substantially Complete, the City will provide Contractor with a list of deficient Work (incomplete or Non-conforming Work) that that Contractor must correct or complete before the City may determine whether the Work has reached Substantial Completion.

C. When Contractor has completed all items on the list of deficient Work, Contractor shall request a second inspection by the City to verify that the Work is Substantially Complete. If the City determines that the Work is not Substantially Complete, the City will follow and repeat the same procedure as for the first inspection as described in Subsection 9.17.B until the Work has reached Substantial Completion or the SFMTA has determined that Contractor cannot or will not complete the Work. Contractor shall reimburse the City for costs incurred by the City and its consultants related to all additional or repeated inspections necessary to confirm that the Work has reached Substantial Completion.

D. As a condition precedent to Substantial Completion, Contractor shall obtain a temporary certificate of occupancy from the City's Department of Building Inspection or other agency having jurisdiction over the Work in the event that such temporary occupancy permit or other required permit(s) are necessary for the City to utilize the Work for the purposes for which it is intended.

E. When the City determines that the Work is Substantially Complete, the City will issue a Notice of Substantial Completion, which shall establish the Substantial Completion date.

F. At the time of delivery of the Notice of Substantial Completion, the City will deliver to Contractor: (1) a Punch List identifying deficient items Contractor must correct as a condition of Final Acceptance; and (2) a written determination as to the division of responsibilities regarding close-out requirements including, but not limited to, security, operation, safety, maintenance, heat, utilities, insurance and warranties.

9.18 FINAL COMPLETION; FINAL ESTIMATE, ACCEPTANCE AND PAYMENT

A. When Contractor has completed all Work, including Punch List Work, Contractor shall notify the Engineer in writing that the Work is complete and date on which it was completed. The Engineer shall inspect the Work and confirm the Work has been fully completed in accordance with the Contract. When all Work has been satisfactorily completed in accordance with the requirements of this Contract, the Engineer will make final and exact measurements of the amount of each class of Work performed and make a final estimate thereof at the prices named in the Contract, and the City will pay to Contractor in the manner provided by law, the balance due under such estimate, excepting such sums as may be lawfully deducted under any provision of the Contract. All prior estimates and payments shall be subject to correction in the final estimate and payment. This estimate of the Engineer shall be final and conclusive evidence of the amount of Work performed by Contractor under this Contract, and shall be taken as full measure of compensation to be received by Contractor.

B. The City shall have no obligation to make final payment until Contractor furnishes the Engineer with the following: (1) all Drawings, records, documentation, information, training and spare parts as required herein; (2) original signed copy of the Release specified in Section 9.19; (3) evidence satisfactory to Engineer to establish that Contractor is not delinquent in payments to its employees and/or creditors for labor and Materials included in the payments; and (4) Releases for any unpaid or otherwise unresolved stop notices or other lien actions.

C. The remaining amount owed for Work completed under this Contract, if unencumbered, shall be paid within 35 Days after the date of the Final Acceptance if all Work is complete and there are no outstanding disputes or actions that would preclude final close-out of the Contract. The City may, however, in its sole and absolute discretion make such final payment, but withhold an amount equal to the value (to be estimated by the Engineer) required to correct or replace Non-conforming Work, amounts assessed as contract liquidated damages, and other amounts withheld under the Contract or by statute. Said amount shall be in addition to any withholding required by law, including but not limited to statutory penalties and stop notice liens. Acceptance by Contractor of said final payment shall constitute a waiver

of all Claims against the City arising under the Contract Documents. As a condition precedent to final payment, Contractor shall furnish a release as required by Section 9.19.

D. Notwithstanding the requirements of Section 9.19 that Contractor provide the City with a release of all claims, should such release not be properly executed or otherwise fail, the Acceptance by Contractor of the Final Payment shall constitute a complete release, satisfaction and full and final accord by Contractor for any and all further claims against the City for compensation or damages under the Contract to the same extent as provided in Subsection 6.02.F.5.

9.19 RELEASE

Contractor and each assignee under an assignment in effect at the time of final payment shall execute and deliver as a condition precedent to final payment, a release in form and substance satisfactory to the City and containing such reservation of rights by Contractor only as to those items in dispute and not previously released, as may be deemed appropriate by the Agency. Said release must discharge the Agency, its officers, agents and employees of and from liabilities, obligations, and claims arising under this Contract on terms not less favorable to the City than the release terms set out in Subsection 6.02.F.5.(Release of Claims). The reservation of rights shall be in a form approved by the City Attorney and SFMTA. The City shall have no obligation to release final payment or retention if Contractor does not provide the release required under this Section 9.19.

9.20 RIGHTS AND REMEDIES

A. All of City's rights and remedies under the Contract Documents will be cumulative and in addition to (and not in any way limiting) all other rights and remedies of City under the Contract Documents or otherwise available at law or in equity.

B. No action or failure to act by the City or the City Representative will constitute a waiver of a right afforded them under the Contract Documents, nor will such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by City or the City Representative of any condition, breach or default will constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver. Any payment by the City shall not be construed as a waiver of any right by the City under the Contract or any law.

ARTICLE 10 -- INSURANCE AND BONDS

10.01 INSURANCE REQUIREMENTS

Contractor shall purchase and maintain in force throughout the term of the Contract and for such further terms as specified in the Special Provisions such general liability insurance and other insurance as required by the Contract Documents. Refer to Special Provisions.

10.02 PERFORMANCE BOND AND PAYMENT BOND

A. Within 10 Days of the City's issuing notice of award of the Contract to Contractor, Contractor shall submit to City the following bonds on the forms provided for bonds in the Contract Documents:

1. A corporate surety bond, in a sum not less than 100 percent of the Contract Sum, to guarantee the faithful performance of the Contract ("Performance Bond"); and
2. A corporate surety bond, in a sum not less than 100 percent of the Contract Sum, to guarantee the payment of labor, Materials, supplies, and equipment used in the performance of the Work (Payment Bond).

B. Said Performance Bond shall cover all replacement, repair or other correction of Non-conforming Work and all warranty and maintenance Work required by the Contract Documents, and any and all work and costs required to correct latent defects in the Work.

C. Corporate sureties issuing the Performance Bond, Payment Bond, and Bid Bond must be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best Rating not less than "A-, VIII," shall be listed in the current version of the United States Department of the Treasury's listing of Approved Sureties (Treasury Dept. Circular 570), and shall be satisfactory to the City.

D. The Contract Sum, as used to determine the amounts of the bonds, shall be the total amount fixed in Contractor's Proposal for the performance of the Work (or the corrected total if errors are found).

E. Upon request by the City, the surety or sureties that issued the performance and payment bonds specified herein shall provide evidence of reinsurance or other capital or security to establish to the satisfaction of the SFMTA that said surety or sureties have sufficient assets to guarantee completion of the Work.

F. During the period covered by the Contract, if any of the sureties upon the bonds shall become insolvent or unable in the opinion of SFMTA to pay promptly the amount of such bonds to the extent to which surety might be liable, Contractor, within 30 Days after notice given by the Agency to Contractor, shall by supplemental bonds or otherwise, substitute another and sufficient surety approved by SFMTA in place of the surety becoming insolvent or unable to pay. If Contractor fails within such 30-Day period to substitute another sufficient surety, Contractor shall, if the Agency so elects, be deemed to be in default in the performance of its obligations hereunder and upon the said bonds, and the Agency in addition to any and all other remedies, may terminate the Contract or bring any proper suit or proceeding against monies then due or which thereafter may become due Contractor under the Contract for the amount for which the surety, insolvent or unable to pay as aforesaid, shall have justified on the bonds, and the monies so deducted shall be held by the City as collateral for the performance of the conditions of the bonds.

ARTICLE 11 -- LABOR STANDARDS

11.01 PREVAILING WAGES

A. All provisions California Labor Code section 1770 et seq. are required to be incorporated into every contract for any public work or improvement and are provisions of this Contract.

B. All provisions of San Francisco Administrative Code Sections 6.22E and 6.22F are incorporated as provisions of the Contract Documents including, but not limited to, the following:

1. Contractor shall pay to all persons performing labor in and about the Work not less than the highest general prevailing rate of wages determined as set forth herein for the respective crafts and employments, including such wages for holiday and overtime work.
2. Contractor shall insert in every subcontract or other arrangement, which it may make for the performance of any Work or labor on the Work, a provision that said Subcontractor shall pay to all persons performing labor or rendering service under said subcontract or other arrangement the highest general prevailing rate of wages determined as set forth herein for the respective crafts and employments, including such wages for holiday and overtime work.

3. Contractor shall keep or cause to be kept complete and accurate payroll records for all persons performing labor in or about the Work. Such records shall include the name, address and social security number of each worker who provided labor, including apprentices, his or her classification, a general description of the services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every Subcontractor who shall undertake the performance of any part of the Work shall keep a like record of each person engaged in the execution of the subcontract. All such records shall at all times be available for inspection and examination by the City and its authorized representatives and the California Department of Industrial Relations (DIR).
4. Contractor and every Subcontractor shall pay to every person in their respective employ who performs labor for any part of the Work the highest general prevailing rate of wages applicable for that persons' work performed of said craft or trade, as that applicable wage rate is determined by the California Employment Development Department and adopted by the City, as specified in Subsection 11.01.C, below. Should Contractor, or any Subcontractor who shall undertake the performance of any part of the Work herein required, fail or neglect to pay to the persons who shall perform labor under this Contract, subcontract or other arrangement for the Work, the highest general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any Subcontractor so failing or neglecting to pay said wage, Contractor and the Subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in Administrative Code Section 6.22(E) and/or Labor Code Section 1775. The City, when certifying any payment that may become due under the terms of the Contract, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture or forfeitures as so certified.
5. No person performing labor or rendering service in the performance of the Contract or a subcontract for the Work herein required shall perform labor for a longer period than five Days (Monday Friday) per calendar week of eight hours each (with two 10-minute breaks per eight-hour Day), except in those crafts in which a different work Day or week now prevails by agreement in private employment. Any person working hours in addition to the above shall be compensated in accordance with the prevailing overtime standard and rates. Contractor or any Subcontractor who violates this provision shall forfeit back wages due plus the penalties set forth in San Francisco Administrative Code Sections 6.22(E) and (F) and/or California Labor Code section 1775.

C. Contractor shall pay the highest applicable prevailing wage rates in effect at the time of the advertisement for Bids for the Contract, and said wage rates, as determined by DIR, are incorporated into this Contract by reference as if fully set out herein. The City shall not be liable for and will not consider any claim arising from increased costs to Contractor due to increases in prevailing wage rates during the term of the Contract. The possibility of changes in wage rates and benefits requirements during the term of the Contract are elements of risk that Contractor must consider in calculating its Bid to perform the Work.

1. Copies of the prevailing wage rates are available from the SFMTA's Contract Compliance Office and the City's Office of Labor Standards

Enforcement and, and are also available on the Internet at <http://www.dir.ca.gov/DLSR/PWD>.

2. Payments to a craft or classification not shown on the prevailing rate determinations shall comply with the rate of the craft or classification most closely related to it. Contact the California Division of Labor Statistics and Research, Prevailing Wage Unit at telephone (415) 703-4774 for job classifications not listed in the General Prevailing Wage Determinations of the Director of Industrial Relations.
3. Contractor and its Subcontractors are advised that the City considers the proper classification for employees who perform all electrical Work associated with the installation of underground-fed traffic signals to be that of Electrician: Inside Wireman.

D. All Work is subject to compliance monitoring and enforcement of prevailing wage requirements by DIR and the San Francisco Office of Labor Standards Enforcement.

E. Contractor shall post job site notices prescribed by DIR at all job sites where Work is to be performed.

11.02 PAYROLL RECORDS

A. **DIR Registration and Reporting.** Contractor shall at all times during the term of this Contract maintain valid registration with DIR as required by California Labor Code section 1771.1. Contractor is advised that payroll records and payment of labor under this Contract is subject to DIR compliance monitoring and enforcement, as provided in Labor Code section 1771.4. Contractor shall report payroll to DIR through its eCPR system or as the DIR may otherwise require. Contractor shall immediately inform the Engineer if it is unable to report payroll records to DIR.

B. **Submission of Certified Electronic Payroll Records.** In addition to reporting payroll to DIR, Contractor shall every month, and more often if directed by Engineer, submit certified payrolls to the City, for each week of the term of the Agreement in which Contractor performs Work. Certified payrolls shall be prepared pursuant to California Labor Code section 1776 for the period involved for all employees and owner-operators, including those of Subcontractors of all tiers.

1. Contractor shall submit certified payrolls to the City electronically via the Project Reporting System (PRS) selected by the City, an Internet-based system accessible on the World Wide Web through a web browser. Contractor and each Subcontractor and Supplier will be assigned a log-on identification and password to access the PRS.
2. Use of the PRS may require Contractor, Subcontractors and Suppliers to enter additional data relating to weekly payroll information including, but not limited to, employee identification, labor classification, total hours worked under this Contract and on other projects, and wage and benefit rates paid. Contractor's payroll and accounting software may be capable of generating a "comma delimited file" that will interface with the PRS software.
3. The City will provide basic training in the use of the PRS at a scheduled training session. Contractor and all Subcontractors and Suppliers and/or their designated representatives must attend the PRS training session.
4. Contractor shall comply with the requirements of this Article 11 at no additional cost to the City.

5. The City will not be liable for interest, charges or costs arising out of or relating to any delay in making progress payments due to Contractor's failure to make a timely and accurate submittal of certified payrolls.

C. Certification and Retention of Payroll Records. Contractor shall comply with the requirements of section 1776 of the California Labor Code, or as amended from time to time, regarding the preparing, keeping, filing and furnishing of certified copies of payroll records of wages paid to its employees and to the employees of its Subcontractors of all tiers.

1. The payroll records shall be certified and shall be submitted electronically to the City as set forth in Section 11.02.A. In addition, Contractor shall make the payroll records available for inspection at all reasonable hours at the job Site office of Contractor on the following basis:
 - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative upon request.
 - b. A certified copy of all payroll records shall be made available for inspection or furnished to a representative of the City upon request.
 - c. A certified copy of all payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the City, the Division of Apprenticeship Standards, or the Division of Labor Standard Enforcement. The public shall not be provided access to such records at the job Site office of Contractor.
 - d. Contractor shall file a certified copy of the payroll records with the entity that requested such records within 10 Days after receipt of a written request.
2. In providing copies of payroll records to any requestor, the City shall redact or obliterate such information as may be required under California Labor Code section 1776(e), as that section may be amended from time to time.
3. Contractor shall inform the City of the location of the payroll records, including the street address, city and county, and shall, within five Working Days, provide a notice of a change of location and address.
4. In the event that Contractor receives a written notification of noncompliance with section 1776, Contractor shall have 10 Days from receipt of such written notice to comply. Should noncompliance still be evident after such 10-Day period, Contractor shall, as a penalty to the City, forfeit \$25 for each Day, or a portion thereof, of non-compliance, for each worker, until strict compliance is effected. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from the Contract Sum.
5. Contractor is solely responsible for compliance with section 1776. The City shall not be liable for Contractor's failure to make timely or accurate submittals of certified payrolls.

11.03 APPRENTICES

A. Contractor and its Subcontractors of every tier shall, as a material term of the Contract, comply with the requirements of the State Apprenticeship Program (as set forth in the California Labor Code, division 3, chapter 4 [commencing at section 3070], and section 1777.5) and San Francisco Administrative Code Section 6.22(N). Contractor shall be solely responsible for securing compliance with Section 1777.5 for all apprenticeable occupations.

1. Contractor shall comply with all requests by the City to provide proof that Contractor and all of its Subcontractors at every tier are in compliance with the State Apprenticeship Program.
2. Contractor shall include in all of its subcontracts the obligation for Subcontractors to comply with the requirements of the State Apprenticeship Program.
3. Section 1777.5 does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than \$30,000.

B. Should Contractor fail to comply with the apprenticeship requirements of section 1777.5, Contractor shall be subject to the penalties prescribed in section 1777.7 of the California Labor Code. The interpretation and enforcement of section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.

C. Contractor, if not signatory to a recognized apprenticeship training program under Chapter 4 of the California Labor Code, shall provide to the City with all progress payment requests, starting with the second such request, satisfactory evidence that it has contributed to the appropriate apprenticeship fund(s). Contractor shall require its Subcontractors who are not signatories to provide such evidence to the City as a condition precedent for qualifying for payment from the City. The City reserves the right to demand such evidence upon request.

11.04 LABOR STANDARDS ENFORCEMENT

A. All Work is subject to compliance monitoring and enforcement of prevailing wage requirements by DIR and the San Francisco Office of Labor Standards Enforcement.

B. In accordance with Administrative Code sections 6.22(E)(7) and 6.24 and applicable sections of the California Labor Code, Contractor further acknowledges and agrees as follows:

1. Contractor shall cooperate fully with the DIR and the Labor Standards Enforcement Officer and other State and City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements and other labor standards imposed on public works contractors by the Charter and Chapter 6 of the San Francisco Administrative Code and the applicable sections of the California Labor Code.
2. The Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the contractor, employee time sheets, inspection logs, payroll records and employee paychecks.
3. Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the Site.

4. Contractor shall post job site notices prescribed by DIR at all job sites where Work is to be performed.
5. The DIR and the Labor Standards Enforcement Officer may audit such records of Contractor as is deemed reasonably necessary to determine compliance with the prevailing wage and other labor standards imposed by the Charter, Chapter 6 of the San Francisco Administrative Code, and the applicable sections of the California Labor Code.

11.05 DEBARRED CONTRACTORS INELIGIBLE

Under California Public Contract Code Section 6109, Contractor or Subcontractors who are ineligible to bid or work on or be awarded a public works project under California Labor Code Sections 1777.1 or 1777.7 are prohibited from performing Work on the Project.

- A. Any contract for the Project entered into between Contractor and a debarred Subcontractor is void as a matter of law.
- B. A debarred Subcontractor may not receive any public money for performing work as a Subcontractor on a public works project. Contractor shall return to the City any public money that may have been paid to a debarred Subcontractor by Contractor.
- C. Contractor shall be responsible for the payment of wages to workers of a debarred Subcontractor that has been allowed to perform Work.

ARTICLE 12 -- SAFETY

12.01 PRECAUTIONS AND PROGRAMS

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall be solely responsible for any and all fines, penalties or damages which result from Contractor's failure to comply with applicable health and safety laws and State and City regulations during performance of the Work.

B. Contractor shall designate in writing a responsible competent person of Contractor's organization at the Site as Contractor's Safety Representative whose principal duties shall be the prevention of accidents and the maintenance and supervision of safety precautions and programs in accordance with the requirements of applicable laws and State and City regulations. This person shall be available 24 hours a Day, seven Days a week by telephone or other approved means.

C. Contractor shall perform all Work relating to hazardous materials as required by the Contract Documents. Contractor and its Subcontractors shall comply with all federal, state and local statutes and regulations on training, handling, storage, public notification and disposal of hazardous materials and hazardous wastes. In the event that Contractor or its Subcontractors (1) introduces and/or discharges, spills or releases a hazardous material onto the site in a manner not specified by the Contract Documents; and/or (2) disturbs a hazardous material identified in the Contract Documents or Reference Documents, Contractor shall immediately notify the Engineer (by telephone and in writing) and any required regulatory agencies (such as the San Francisco Department of Public Health, Cal-OSHA, and Cal-EPA that under applicable Code must be notified) of the spill, release or discharge. Upon knowledge of said spill, release or discharge, Contractor shall stop the Work, and cordon off the affected area to secure entry. Removal and disposal of the hazardous material, if deemed necessary by the City, will, at the discretion of the City, be performed either by the City at Contractor's expense or by Contractor, through a qualified remediation Subcontractor, at

Contractor's expense. Under no circumstance shall Contractor perform remediation Work for which it is not qualified.

D. Should Contractor or any of its Subcontractors, while performing Work on the Site, unexpectedly encounter any hazardous material not shown in the Contract Documents or Reference Documents, or have reason to believe that any other material encountered may be a hazard to human health and safety and/or the environment, Contractor shall stop the Work, cordon off the affected area to secure entry, and shall immediately notify the Engineer. Removal and disposal of the hazardous material not shown in the Contract Documents or Reference Documents, if deemed necessary by the City, will be performed as directed by the City at the City's expense. In the event that Contractor is delayed in the completion of the Contract Work solely because of such hazardous materials or conditions not previously identified in the Contract Documents or Reference Documents, Contractor shall be entitled subject to proof to an extension of time in accordance with Section 3.04.

E. Contractor shall obey and enforce all applicable safety orders, General Orders, rules and recommendations of the Division of Industrial Safety of California and the California Public Utilities Commission. Contractor shall obey and enforce all applicable safety orders, rules, procedures and requirements of the SFMTA's Safety Division, including, but not limited to, the SFMTA "Contractor Safety Program" and the Roadway Worker Protection (RWP) Program. Contractor shall ensure that its personnel and Subcontractor personnel are trained in applicable SFMTA safety procedures, requirements and the RWP. Contractor shall obtain permission from the SFMTA's Operations Control Center (OCC) before working near high voltage overhead power traction lines, within six feet of an SFMTA rail line, near tunnel portals, in tunnels, or in maintenance yards or maintenance facilities.

F. Flagging for train traffic, which includes light rail vehicles, historic rail vehicles and cable cars, will be required any time Work is being performed within six feet of the right-of-way or 10 feet from all high voltage overhead traction power lines. Flagging personnel must be qualified SFMTA employees. The costs for flagging will depend on the work zone location, length of the work zone and work machines used; more than one flagger may be needed to provide proper protection. The estimated cost of flagging protection will be included in the cost of the SFMTA Permit and Clearance (see Section 12.02.E below). The SFMTA will bill the Contractor for any flagging charges incurred in excess of the estimate.

12.02 PERSONS AND PROPERTY

A. Contractor shall protect the Work and Materials from damage due to the nature of the Work, the action of the elements, the carelessness of other contractors, or any other cause whatever, until the completion and acceptance of the Work. Should any damage occur to the Work or Materials, Contractor shall repair or replace it at its own expense to the satisfaction of the Engineer. Prior to Final Acceptance, neither the City nor any of its agents assume any responsibility for seeking indemnity or collecting costs, damages or other restitution from any person or persons causing damage to the Work performed under this Contract.

B. To the maximum extent provided under law, Contractor shall bear all responsibility for damage to persons and property arising from or in consequence of Contractor's performance of this Contract.

C. Contractor shall provide guards, fences, warning signs, walks and lights and shall take all other necessary precautions to prevent damage or injury to persons and property. Contractor shall take all necessary precautions for safety of, and shall provide the necessary protection to prevent damage, injury or loss to the following:

1. All persons on the Site or others who may be affected by the Work;

2. The Work and the Materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. Other property at the Site or adjacent thereto including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not indicated to be removed, relocated or replaced on the Contract Documents.

D. Contractor shall be familiar with and shall ensure that its employees and Subcontractors are trained in applicable SFMTA safety orders and standard operating procedures, including but not limited to the SFMTA Safety Program and the SFMTA RWP Program. Contractor shall be familiar with and shall ensure that its employees and Subcontractors have required safety certificates, including but not limited to certification of safety training provided by the SFMTA's Safety and/or Training Division. Contractor shall hold regular "tailgate" safety sessions and other trainings to refresh its employees' and Subcontractors' knowledge of Site safety. Where Work is to be performed within six feet of all SFMTA rail line segments, 10 feet from high voltage overhead traction power lines, including support/ span infrastructure, or in SFMTA tunnels, tunnel portals, station platforms, and vehicle yards and maintenance facilities, the Contractor shall provide a full safety briefing consistent with the SFMTA RWP program each day prior to the commencement of any Work activity.

E. When the project plans call for the Contractor to work within six feet of an SFMTA rail line, the Contractor must contact the Construction Liaison Officer of SFMTA's Street Operations and arrange to meet with SFMTA personnel representing Street Operations and Maintenance of Way. If SFMTA personnel determine that a "Permit and Clearance" is required, the Contractor must complete a Permit and Clearance application and attend the next trackway access meeting to advise SFMTA OCC managers on the effect the project will have on SFMTA rail operations. This meeting and review procedure is required prior to work commencing on or near any SFMTA right-of-way.

F. If the OCC managers determine that a Permit and Clearance is required, prior to commencement of work, the Contractor must:

1. Obtain the Permit and Clearance; and
2. Contact the Construction Liaison Officer and the Superintendent of Track Maintenance to obtain qualified Municipal Railway personnel to control traffic and provide protection to the Contractor's personnel in accordance with SFMTA's RWP Program; and ensure that such personnel are available at the work site to properly set up proper RWP protection.

G. As much of the moneys due and retained by the City under this Contract as may be considered necessary by the Engineer may, at the Agency's option, remain unpaid until all suits or claims for damages as described above shall have been settled and resolved and satisfactory evidence of settlement and final resolution has been provided to the Agency.

H. Contractor shall give all notices pursuant to California Civil Code section 832 and shall comply with all applicable Codes and lawful orders of public authorities bearing on the safety and protection from injury, damage or other loss of persons or property that may potentially be affected by the Work.

I. Contractor shall notify owners of adjacent property, underground facilities and utilities, including but not limited to PG&E, AT&T, BART, the San Francisco Municipal Railway, the San Francisco Department of Public Works, Hetch Hetchy Water and Power, and the San Francisco Public Utilities Commission, of Contractor's operations a reasonable time in advance thereof so as to permit the owners said utilities to make suitable markings on the street surface of the locations of their facilities. After such markings have been satisfactorily made, Contractor shall maintain them as long as necessary for the proper conduct of the Work.

J. Contractor shall not hinder or interfere with an owner or agency that owns underground facilities and utilities when Contractor removes, relocates, or otherwise acts to protect such facilities. Contractor shall perform all Work in such manner as to avoid damage to existing underground facilities and other utilities in the process of the removal or adjustment of such utilities and to avoid damage to such facilities lying outside of or below a required excavation or trench area that are intended to remain in place.

K. Contractor shall take all reasonable precautions to prevent fires, on the Site or in the vicinity of the Work, and shall be responsible for all damage from fires due directly or indirectly to any fault of Contractor, any Subcontractor, or any of its or their employees. Contractor shall observe all applicable regulations pertaining to the prevention of fires in areas in which it performs the Work. Contractor shall at all times have readily available at the Site, fully charged and operational fire extinguishers appropriate in size, function and suppressant material to the Work.

L. Contractor shall be responsible for coordinating the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with applicable Codes.

M. In the event of damage or loss to property referred to in the previous Subsections, whether caused by Contractor, its Subcontractors or Lower-Tier Subcontractors, Contractor shall promptly remedy such damage or loss, except such damage or loss attributable to the sole negligent acts or omissions of the City. The foregoing obligations of Contractor are in addition to Contractor's general obligations as to cleaning and debris removal set out in Section 3.19.

N. Pursuant to California Labor Code section 6705, excavation for trenches 5 feet or more in depth shall not begin until Contractor has received acceptance from the City of Contractor's detailed plan for worker protection from the hazards of caving ground during excavation of such trenches. Contractor's shoring plan shall be submitted in accordance with the requirements of the Technical Specifications and shall show the details and supporting calculations of the design of shoring, bracing, sloping, or other provisions to be made for worker protection during such excavation. No plan shall allow the use of shoring, sloping or other protective system that is less effective than those required by the Construction Safety Orders of the Division of Occupational Safety and Health and other applicable Codes. If Contractor's shoring plan varies from the shoring system standards established by the Construction Safety Orders and other applicable Codes, the plan shall be prepared and sealed by an engineer retained by Contractor who is registered as a civil or structural engineer in the State of California. The City's review and acceptance of Contractor's shoring plan shall not be construed to relieve Contractor of its sole responsibility for damage or injuries resulting from excavation and shoring.

O. Contractor shall be responsible for each operation and all Work, both permanent and temporary. Contractor shall protect the Work and Materials and fully or partially completed work of the City or separate contractors from damage due to construction operations, the action of weather and other natural forces, the carelessness of its Subcontractors, vandalism, graffiti, or any other cause whatsoever, until Final Acceptance of the Work. Should improper work of any trade be covered by another contractor and damage or defects result, Contractor shall make the whole Work affected good to the satisfaction of the City and without expense to the City.

P. The City shall have the right as provided in Section 2.03 to suspend the Work due to Contractor's unsafe work practices or unaddressed hazards at the Site that present a significant and imminent danger to persons or property. Should the City require Contractor for said reasons to suspend the Work, such suspension order shall not relieve Contractor of its

responsibility for the safety and security of the Site and the Work. (See Sections 3.20 and 12.05.)

12.03 SAFETY PERMITS

A. Contractor shall obtain, at its cost, a California industrial safety permit if the Work includes any of the following:

1. The construction of a building, structure, false work or scaffolding more than 3 stories or the equivalent of 35 feet height; or
2. The demolition of a building, structure, false work or scaffolding more than 3 stories or the equivalent of 35 feet height; or
3. The excavation of a trench five feet deep or deeper into which a person must descend.

B. Contractor shall obtain and pay for all other required safety permits.

12.04 EMERGENCIES

In emergencies affecting the safety or protection of persons or property at the Site, Contractor shall act promptly to prevent damage, injury or loss. Contractor shall give prompt written notice to the City if Contractor believes that, due to the nature of the emergency or circumstances related thereto, any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If the City determines that a change in the Contract Documents is required because of action taken by Contractor in response to such an emergency, a Change Order or Unilateral Contract Modification will be issued as provided in Article 6.

12.05 SFMTA SAFETY DIVISION - STOP WORK ORDERS

The SFMTA's Safety Division and Industrial Safety and Environmental Compliance (ISEC) unit each have the authority to order Contractor to suspend the Work at any time that the acts or omissions of Contractor, Subcontractors, or their respective personnel pose an imminent threat to the safety of any person or property. Representatives of the SFMTA's Safety Division where, whenever possible, will work through the Engineer and Contractor's designated representative to correct conditions that endanger persons and property. But the Safety Division and ISEC may, in certain circumstances, require Contractor to stop work, secure and vacate personnel and equipment at any Site until such time as the Engineer may address and Contractor may correct said dangerous condition(s) or non-compliance with the RWP Program rules and procedures. The exercise of said authority by the Safety Division or ISEC shall not constitute a release of the delegation of control of the Site to Contractor and shall not in any way reduce Contractor's responsibility for safety on the Site or its liability for injury to persons or property.

12.06 LARGE VEHICLE DRIVER SAFETY TRAINING REQUIREMENTS

Contractor agrees that, before any of its employees and Subcontractors drive large vehicles within the City of San Francisco, those employees and Subcontractors will successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety will be posted and made available for download at www.SFMTA.com/largevehicletrainingstandards. This requirement does not apply to drivers providing delivery services who are not employees or Subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 lbs or more, or a van designed to carry 10 or more people.

By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to \$1,000 per employee or Subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

Contractor has acknowledged that it has read and understands these requirements by executing the "Acknowledgement of Large Vehicle Driver Safety Training Requirements" included as Page 20 to this Agreement.

ARTICLE 13 -- CONTRACT AND GOVERNMENT CODE CLAIMS

13.01 CLAIMS GENERALLY

A. The City and Contractor acknowledge and agree that early identification and resolution of potential claims or disputes benefits all parties and advances the success of the Project.

B. The notice requirements and procedures set forth under this Article 13 are necessary for the City to address potential claims and disputes. Having knowledge of potential claims prior to Contractor performing disputed Work and having documentation from Contractor concerning a dispute as Work is being performed is critical for the City to make informed decisions that may impact the budget and schedule for the Project. Timely notice of all facts and circumstances concerning a dispute and the preservation of contemporaneous documentation of those facts and circumstances is necessary for the efficient and fair resolution the dispute.

C. Compliance with the Notice of Potential Contract Claim and Contract Claim submission procedures prescribed in this Article are condition precedents to the right to file a Government Code Claim under California Government Code section 900, et seq., and San Francisco Administrative Code Chapter 10. Contractor's submittal of timely and proper Notice of Potential Contract Claims and Contract Claims as set out in Section 13.04, except as to those claims listed in Subsection 13.01.D, below, may toll Contractor's compliance with the Government Code Claim requirements until the Contract Claim administrative process is finally completed. The timely submission of both a properly completed Contract Claim and a Government Code Claim are conditions precedent to commencing litigation against the City for disputes arising out of or related to this Contract that are not expressly excluded from the Contract Claim process per Subsection 13.01.D, below. Disputed issues not timely raised and properly documented in conformance with this Article shall be deemed waived by Contractor and may not be asserted in a Government Code Claim, subsequent litigation, or other legal action. Furthermore, by executing this Contract, Contractor waives any and all claims or defenses of waiver, estoppel, release, bar, or any other type of excuse of non-compliance with the Contract Claim submission requirements.

D. The Contract Claim procedures specified in this Article 13 do not apply to the following: (1) claims respecting penalties for forfeitures prescribed by statute or regulation which a government agency is specifically authorized to administer, settle, or determine; (2) claims respecting personal injury, death, reimbursement, or other compensation arising out of or resulting from personal injury or death; (3) claims by the City; or (4) claims respecting Stop Notices filed under the California Civil Code.

E. The requirements of this Article 13 shall survive expiration or termination of this Contract.

13.02 OVERVIEW OF CLAIMS PROCESS

As more specifically described in this Article 13, the following process for addressing Contractor claims shall apply:

A. No later than seven Days from the time when Contractor knows (or reasonably should know) of a potential Contract Claim, Contractor shall submit to the City a Notice of Potential Claim. The Engineer will review a Notice of Potential Contract Claim and may respond or otherwise act upon said Notice, but has no obligation to do so.

B. No later than 30 Days from the time when Contractor knows (or reasonably should know) of a potential Contract Claim, Contractor shall submit to the Engineer a certified, complete, and fully documented Contract Claim.

C. The Engineer will respond in writing to a Contract Claim within thirty Days of receipt. If Contractor is not satisfied with the Engineer's response, Contractor may appeal the Engineer's response to the Contract Claim to the SFMTA's Deputy for Contract Administration or other SFMTA representative as specified in the Special Provisions.

D. If a Dispute Resolution Board (DRB) has been established for the Contract and Contractor refers the Contract Claim to the DRB for review, but is not satisfied with the recommendation of the DRB or if the Engineer rejects the recommendation of the DRB, Contractor may then finally appeal the Contract Claim to the SFMTA's Director of Capital Programs and Construction for final administrative determination.

E. As a prerequisite to submitting a claim under California Government Code section 900, et seq., and San Francisco Administrative Code Chapter 10 ("Government Code Claim") and filing a lawsuit as authorized under that authority, Contractor must first appeal to the SFMTA's Director of Capital Programs and Construction the Engineer's denial of Contract Claim, the Engineer's rejection of a DRB recommendation, or the adverse decision of the DRB, which would be the basis of the Government Claim, (See Section 13.05). The time limits for filing a Government Claim are tolled until the Director of Capital Programs and Construction issues a final determination of a Contract Claim.

13.03 NOTICE OF POTENTIAL CONTRACT CLAIM

A. If, during the course of the Work, Contractor disputes any directive, determination (including determination concerning delay), Proposed Contract Change, rejection of Change Order Request (COR), Unilateral Contract Modification, payment, or other act by the City impacting or potentially impacting Contractor's performance of the Work (collectively, "Potential Claim Events"), Contractor shall submit to the Engineer a Notice of Potential Claim. Contractor shall submit such Notice within seven Days of the date that it has knowledge (or reasonably should have knowledge of) the Potential Claim Event. A Notice of Potential Claim shall describe the Potential Claim Event, provide a good faith estimate of any impact (as to cost and time, as applicable), and must reference any relevant provisions of the Contract Documents and any schedules with sufficient specificity for the Engineer to review the matter. Any claim concerning a request for additional time must include a time/schedule impact analysis.

B. Failure to submit a timely, properly documented Notice of Potential Claim shall constitute a waiver of any claim arising out of such potential claim event.

13.04 CONTRACT CLAIMS

A. General Contract Claim Requirements.

1. No later than thirty Days from the date that Contractor has or reasonably should have knowledge of the Potential Claim Event, Contractor must

submit to the Engineer a Contract Claim for additional compensation or time based on any dispute concerning: (a) the true value of any Work performed or any changes in the Work which Contractor may be required to perform; (b) grant or denial of time extensions; (c) the amount of payment due Contractor for Work; and/or (d) the performance of obligations by any party. The City is not obligated to consider a Contract Claim submitted after thirty Days from the Potential Claim Event.

2. A Contract Claim shall be Contractor's sole and exclusive administrative remedy for additional compensation or time associated with its performance of the Work and/or other requirements of the Contract. Failure to submit a timely, certified, and documented Contract Claim in conformance with this Article shall constitute a waiver by Contractor as to any claim or action relating to the Work and the Contract, and such failure to timely file a fully documented and certified Contract Claim shall constitute a failure by Contractor to exhaust its administrative remedies.
3. Contractor shall be solely responsible for any and all costs it incurs in preparing, filing, presenting, appealing or otherwise pursuing a Contract Claim, which costs shall not be reimbursed or otherwise recovered from the City.
4. A voucher, invoice, COR, RFI or other routine request for payment or information submitted by Contractor shall not be considered a Contract Claim, unless and until it is specifically titled as a Notice of Potential Contract Claim and it meets the notification and documentation requirements of this Article. If such routine request is disputed as to liability or amount, then the disputed portion of the submission may be converted into a Contract Claim by submitting a separate Contract Claim in compliance with this Section.

B. Contract Claim Certification Requirement.

1. Contractor shall certify under penalty of perjury and in writing in each Contract Claim that Contractor submits on behalf of itself and on behalf of any Subcontractor(s), as applicable, that:
 - a. Contractor has in good faith and with due diligence investigated its claim and gathered and reviewed such relevant evidence and documents that it possesses to support the Contract Claim;
 - b. supporting data and documents submitted in support of the Contract Claim are accurate and complete to the best of Contractor's (and/or Subcontractor's) knowledge and belief; and
 - c. the amount requested accurately reflects the Contract adjustment as to compensation or time for which Contractor believes the City is liable.
2. An individual or officer who is authorized to act on Contractor's behalf shall execute the certification.
3. If Contractor submits a Contract Claim or portion of a Contract Claim on behalf of a Subcontractor, Contractor shall fully review the Subcontractor's Claim and shall certify that the Subcontractor's Claim or such relevant portion(s) of the Subcontractor's Contract Claim, under penalty of perjury, in the same manner Contractor would certify its own Contract Claim under the foregoing Subsection 13.04.B(1). The City will not consider a direct

claim by any Subcontractor. Subcontractors at any tier are not third-party beneficiaries of this Contract.

4. Contractor's failure to certify a claim under penalty of perjury within the 30-Day claim period described in Subsection 13.04.A.1 shall render the claim a nullity and Contractor shall have thereby waived the underlying claim or dispute and Contractor shall not have any further recourse or remedy concerning said claim.
5. If Contractor submits a false claim, on behalf of itself or a Subcontractor, Contractor will be deemed in breach of the Contract and may be subject to civil penalties, damages, debarment, and criminal prosecution in accordance with local, state, and federal statutes.

C. Format of a Contract Claim.

1. Contractor shall document its Contract Claim in the following format:
 - a. Cover letter and certification.
 - b. Narrative Summary of Claim merit and amount of compensation and/or time requested, and provisions of the Contract on which Contractor bases the Claim.
 - c. List of documents relating to Contract Claim:
 - 1) Technical Specifications
 - 2) Drawings
 - 3) Clarifications/RFIs
 - 4) Correspondence
 - 5) Schedules
 - 6) Other
 - d. Chronology of events and correspondence.
 - e. Explanation and analysis of Contract Claim merit. Any claim concerning additional time must include a time/schedule impact analysis as provided in Subsection 13.04.D, below.
 - f. Explanation and analysis of Contract Claim costs, including materials, labor, and time related costs.
 - g. Attachments.
 - 1) Technical Specifications
 - 2) Drawings
 - 3) Clarifications/RFIs
 - 4) Correspondence
 - 5) Schedules
 - 6) Other

D. Additional Requirements for Contract Claims Regarding Time Extensions.

1. All Contract Claims regarding delays or extension of Contract Time and/or challenging the City's assessment of liquidated damages shall include, in addition to all other applicable requirements of this Article 13, an analysis

of the delays impacting the as-built critical path. The as-built critical path shall be determined by (a) comparing the late dates for schedule activities indicated in Contractor's "as-planned" CPM schedule (as approved by the City) with the actual dates for the same activities, and then (b) determining the longest path through the as-built schedule using Contractor's originally-approved as-planned activity to activity logic. The "As-Built" CPM shall reflect the exact manner in which the Work was actually constructed (including start and completion dates, actual sequence and durations of work activities, and logic).

2. The City will not review or consider any Contract Claim regarding extension of Contract Time based upon an impacted as-planned CPM, collapsed as-built schedule, time impact analysis or similar method that does not take into account actual events on the Project or that is otherwise not calculated against the baseline schedule described in Subsections 7.01.C and 7.01.D.

E. Procedure for Review of a Contract Claim.

1. The City will review only timely, certified, and properly documented Contract Claims.
2. The Engineer will respond to a Contract Claim, in writing, within 30 Days of receipt of such Contract Claim. In its response, the Engineer will either grant or deny the Claim in whole or in part. If the Engineer does not respond to a Claim within the 30-Day period, the Contract Claim shall be deemed to have been denied in its entirety.
3. Within 10 Days of the date of the Engineer's response or expiration of the 30-Day period, whichever is earlier, Contractor may request review of (appeal) the Contract Claim and the City's response by the SFMTA's Deputy for Contract Administration. The request must be in writing, directed to the Deputy for Contract Administration. If a Dispute Resolution Board (DRB) has been established for the Contract, in the alternative, Contractor may within said ten -Day period refer the Contract Claim to the DRB following the procedures set out in the Contract to invoke DRB review. Failure by Contractor to appeal the Contract Claim to the Deputy for Contract Administration, or to refer the Contract Claim to the DRB within said ten-Day period, shall constitute acceptance by Contractor of the Engineer's original response to the Contract Claim.
4. Upon a timely and proper request for appeal, the Deputy for Contract Administration will review the relevant documents, meet with Contractor and City personnel assigned to the Work, and confirm or revise the City's response to the Contract Claim. The Deputy for Contract Administration will issue such determination within 60 Days of the date of the request for review. If the Deputy for Contract Administration takes no action on the appeal, the appeal shall be deemed denied.
5. If Contractor disagrees with a denial of claim or other decision of the Deputy for Contract Administration on appeal (or takes no action on an appeal), Contractor may within ten Days of the decision by the Deputy (or expiration of the 60-Day review period, whichever is sooner) make a final appeal to the SFMTA's Director of Capital Programs and Construction.
6. The determination by the Deputy for Contract Administration, or if appealed to the Director of Capital Programs and Construction, then the

decision of the Director, shall constitute the final administrative determination of the City. If neither the Deputy of Contract Administration nor the Director of Capital Programs and Construction take any action on an appeal, then the Engineer's original response to the Contract Claim shall constitute the final administrative determination by the City as to the matters addressed in that claim.

7. If a DRB has been established for the Contract and Contractor elects to refer the Contract Claim to the DRB, the provisions of this Contract concerning DRB review shall govern. If Contractor is not satisfied with the DRB's recommendation, or if the Engineer rejects the DRB's recommendation, within ten Days of the date of the DRB's report, Contractor may appeal the Engineer's determination to the Deputy for Contract Administration and then to the Director of Capital Programs and Construction, as provided in Subsections 13.04.E.3-5, above.

13.05 GOVERNMENT CODE CLAIM

A. Contractor shall comply with the requirements of San Francisco Administrative Code Chapter 10 (Chapter 10) and California Government Code Sections 900, et seq. (Govt. Code Claim Requirements), as a prerequisite to filing a lawsuit against the City relating to or arising out of Contractor's performance of the Work or any provision or requirement of the Contract. For the purposes of this Contract, the City and Contractor agree that any action at law against the City arising out of or relating to Contractor's performance of the Work shall accrue no later than on the effective date of the termination of the Contract as provided in Article 14, or upon Substantial Completion, whichever comes first. This provision shall not limit or otherwise abrogate the City's rights, including, but not limited to, the City's legal rights and remedies as to latent defects in the Work, such as those established under California Code of Civil Procedure Section 337.15.

B. Notwithstanding any provision of this Article, the timely submittal of a complete and proper Contract Claim under the administrative procedure specified in this Article 13 shall toll Contractor's compliance with the Government Code Claim requirements under the Government Code Claim Requirements, and Chapter 10 until the Deputy for Contract Administration or the Director of Capital Programs and Construction issues a final administrative determination per Subsection 13.04.E, above. But said tolling shall not operate to waive or otherwise excuse Contractor's compliance with the Government Code Claim Requirements and Chapter 10.

13.06 DEBARMENT, SUBMITTING FALSE CLAIMS; MONETARY PENALTIES

A. Contractor acknowledges that any contractor, subcontractor or consultant who commits any of the acts listed in Subsection 13.06.B shall be liable to the City for three times the amount of damages which the City sustains because of the act of that contractor, subcontractor or consultant.

B. A contractor, subcontractor or consultant who commits any of the following acts shall also be liable to the City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim, where contractor:

1. Knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval;
2. Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City;

- 3. Conspires to defraud the City by getting a false claim allowed or paid by the City;
- 4. Knowingly makes uses or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City;
- 5. Is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

C. In addition to the penalties described in this Section, any contractor, subcontractor, supplier, consultant or subconsultants who submit false claims may be declared an irresponsible bidder/contractor or an unqualified consultant and debarred according to the procedures set forth in Chapter 6 of the San Francisco Administrative Code.

13.07 AGREEMENT MADE IN CALIFORNIA; VENUE

Contractor stipulates that: (A) this Contract was advertised, let, executed, and performed in the City and County of San Francisco; (B) the formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California without regard to any conflict of laws provisions therein; and, (C) venue for all litigation concerning this Contract shall be in San Francisco to the extent that a court located in San Francisco has subject matter jurisdiction.

13.08 APPLICATION OF THE FEDERAL ACQUISITION REGULATIONS

The City has not adopted the Federal Acquisition Regulations (the FAR). Except where specific requirements or standards of the FAR are referenced in the Contract, the City shall not in the interpretation or enforcement of this Contract be bound by the FAR or by legal precedent applying or interpreting the FAR.

13.09 NO SUSPENSION OF WORK

In no event shall Contractor suspend, delay or stop Work, including disputed Work, pending resolution of the dispute administratively or in a court of law. The provisions of this Article 13 shall survive termination or completion of this Contract.

ARTICLE 14 -- TERMINATION OR SUSPENSION OF THE CONTRACT

14.01 GROUNDS FOR AND NOTICE OF DEFAULT; TERMINATION BY THE CITY FOR CAUSE

A. Grounds for Default.

- 1. Refuses or fails to supply enough properly skilled workers, adequate and proper Materials, or supervision to prosecute the Work at a rate necessary to complete the Work within the specified limits of Contract Time, in accordance with the currently accepted updated progress schedule; or
- 2. Is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or
- 3. Refuses or fails in a material way to replace or correct Non-Conforming Work; or
- 4. Repeatedly fails to make prompt payment due to Subcontractors or for labor; or

5. Materially disregards or fails to comply with any law, ordinance, rule, regulation or order of any government agency that has jurisdiction over any portion, means, or methods of the Work; or
6. Intimidates or sexually harasses a City employee, agent, or member of the public; or
7. Is otherwise in material breach of any provision of the Contract Documents.

B. Notice of Default. When any of the above grounds for Default exist, the City may, without prejudice to any other rights or remedies that the City may have, issue a written Notice of Default to Contractor. The City will provide a copy of any Notice of Default to Contractor's surety.

1. The Notice of Default shall identify the ground(s) for Default and provide Contractor with a 14-Day cure period to complete necessary corrective Work and/or actions.
2. In the event that necessary corrective Work and/or actions cannot be completed within the 14-Day cure period through no fault of Contractor or its Subcontractors and suppliers, Contractor shall, within the 14-Day cure period, (a) provide the City with a schedule, acceptable to the City, for completing the corrective Work and/or actions; and (b) commence diligently the corrective Work and/or actions. The City, after accepting Contractor's proposed schedule, will amend the Notice of Default in writing to set forth the agreed-upon cure period. The City will provide a copy of the amended Notice of Default to Contractor's surety.

C. Termination for Cause. If Contractor fails to completely cure the Default, either within the 14-Day cure period set forth in the Notice of Default or within the agreed-upon cure period set forth in an amended Notice of Default, then the City may, without prejudice to any other rights or remedies that the City may have, immediately terminate employment of Contractor and, subject to the prior rights and duties of the surety under any bond provided in accordance with the Contract Documents:

1. Take possession of the Site and use any Materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor to complete the Work;
2. Accept assignment of subcontracts and agreements pursuant to Section 4.03; and/or
3. Finish the Work by whatever reasonable method the City may deem expedient.

D. Payment. When the City terminates the Contract for one of the grounds set forth in Subsection 14.01.A, Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds the sum of the cost to the City of finishing the Work and the value of liquidated damages for delays and other damages owed by Contractor to the City, such excess shall be paid to Contractor. If the sum of such costs exceeds the unpaid balance, Contractor shall pay the difference to the City. The amount to be paid to Contractor or City, as the case may be, upon application, shall be an obligation for payment that shall survive termination of the Contract. Upon completion of all Work, Contractor shall be entitled to the return of all its Materials which have not been used in the Work, its plant, tools, equipment and other property provided, however, that Contractor shall have no claim on account of usual and ordinary depreciation, loss, wear and tear.

E. Termination for Convenience if Good Cause not Found. If, after termination of Contractor's right to proceed with the Work, it is determined that Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties, including adjustment of the Contract Sum, shall be the same as if the termination had been issued for the convenience of the City, as provided under Section 14.03.

14.02 SUSPENSION BY THE CITY FOR CONVENIENCE

A. The City may, with or without cause, order Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine.

B. An adjustment shall be made as provided in Section 7.02 for increases to Contractor's cost to perform the Contract caused by suspension, delay or interruption directed by the City, but no adjustment shall be made to the extent:

1. That performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; or
2. That an equitable adjustment is denied under another provision of this Contract; or
3. Such suspension is specifically provided for in the Contract Documents, and was therefore included in the Contract Sum.

14.03 TERMINATION BY THE CITY FOR CONVENIENCE

A. Pursuant to Section 6.22L of the San Francisco Administrative Code, the City may terminate the performance of Work under this Contract in accordance with this Section 14.03 in whole or, from time to time, in part, whenever the City shall determine that such termination is in the best interests of the City. Any such termination shall be effected by delivery to Contractor of a notice of termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.

B. After receipt of a notice of termination, and except as otherwise directed by the City, Contractor shall comply with all of the following requirements.

1. Stop Work under the Contract on the date and to the extent specified in the notice of termination.
2. Place no further orders or subcontracts for Materials, services, or facilities except as necessary to complete the portion of the Work under the Contract that is not terminated.
3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination.
4. Assign to the City, in the manner, at the times, and to the extent directed by the City, all of the right, title, and interest of Contractor under the orders and subcontracts so terminated. The City shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
5. Settle all outstanding liabilities and all Claims arising out of such termination of orders and subcontracts with the approval or ratification of the City, in writing, to the extent it may require. The City's approval or ratification shall be final for all the purposes of this Section 14.03.
6. Transfer title to the City, and deliver in the manner, at the times, and to the extent, if any, directed by the City, (a) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced

as a part of, or acquired in connection with the performance of, the Work terminated by the notice of termination; and (b) the completed or partially completed drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the City.

7. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that the City directs or authorizes, any property of the types previously referred to herein, but Contractor (a) shall not be required to extend credit to any purchaser, and (b) may acquire any such property under the conditions prescribed and at a price or prices approved by the City. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the City to Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the City may direct.
8. Complete performance of such part(s) of the Work as shall not have been terminated by the notice of termination.
9. Take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to this Contract that is in the possession of Contractor and in which the City has or may acquire an interest.

C. After receipt of a notice of termination, Contractor shall submit to the City its termination Contract Claim, in the form and with the certification the City prescribes. Such termination Contract Claim shall be submitted promptly, but in no event later than 90 Days from the effective date of termination, unless one or more extensions in writing are granted by the City upon written request of Contractor within such 90-Day period or an authorized extension period. However, if the City determines that the facts justify such action, it may receive and act upon any such termination Contract Claim at any time after such 90-Day period or extension period. If Contractor fails to submit its termination Contract Claim within said 90-Day period or extension period, the City may determine, on the basis of information available to the City, the amount, if any, due to Contractor because of the termination. The City shall then pay to Contractor the amount so determined as a Unilateral Contract Change (see Section 6.03).

D. Subject to the previous provisions of this Section 14.03, Contractor and the City may agree upon the whole or any part of the amount or amounts to be paid to Contractor because of the total or partial termination of Work. The amount or amounts may include a reasonable allowance for profit on Work properly performed. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Sum as reduced by the amount of payments otherwise made and as further reduced by the Contract Sum of Work not terminated. The Contract shall be amended accordingly, and Contractor shall be paid the agreed amount. The provisions of this Section that limit the amount to be paid to Contractor in the event that Contractor and the City fail to agree upon the whole amount to be paid to Contractor because of the termination of Work shall also serve to limit, the amount or amounts that the parties may agree shall be paid to Contractor following termination of the Work.

E. If Contractor and the City fail to agree, as Subsection 14.03.D provides, on the whole amount to be paid to Contractor following the City's termination of Work under Section 14.03, the City shall reasonably determine, on the basis of information available to the City, the amount, if any, due to Contractor because of the termination and shall pay to Contractor the amounts determined as follows:

1. For all Contract Work performed before the effective date of the notice of termination, the total (without duplication of any items) of the following items:
 - a. The cost of Work performed before the effective date of the notice of termination.
 - b. The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as previously provided. This cost is exclusive of the amounts paid or payable on account of supplies or Materials delivered or services furnished by Contractor before the effective date of the notice of termination. These amounts shall be included in the cost on account of which payment is made for the cost of Work previously provided.
 - c. A sum, as profit on the cost of the Work as provided in Subsection 14.03.D, that the City determines to be fair and reasonable. But, if it appears that Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed, and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated loss.
2. The reasonable cost of the preservation and protection of property incurred as previously provided. The total sum to be paid to Contractor shall not exceed the total Contract Sum as reduced by the amount of payments otherwise made and as further reduced by the Contract price of Work not terminated. Except for normal spoilage, and except to the extent that the City shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to Contractor the fair value, as determined by the City, of property that is destroyed, lost, stolen, or damaged, to the extent that it is undeliverable to the City, or to a buyer as previously provided.

F. In accordance with the claims and venue requirements of the Contract, Contractor shall have the right to dispute in a court of competent jurisdiction any determination the City makes under Subsection 14.03.E. But if Contractor has failed to submit its termination Contract Claim within the time provided and has failed to request extension of such time, it shall have no such right to dispute the City's determination. In any case where the City has determined the amount owed, the City will pay to Contractor the following:

1. If there is no right to dispute hereunder or if a right to dispute has not been timely exercised, the amount so determined by the City; or
2. If a proceeding is initiated in a court of competent jurisdiction, the amount finally determined in said proceeding.

G. In arriving at the amount due Contractor under this clause, the City shall deduct:

1. All unliquidated advance or other payments on account that have been made to Contractor, applicable to the terminated portion of this Contract;
2. The value of any claim that the City or any of its departments or agencies may have against Contractor; and
3. The agreed price for, or the proceeds of sale of, any Materials, supplies, or other things kept by Contractor or sold, under the provisions of this Section 14.03, and not otherwise recovered by or credited to the City.

H. If the termination hereunder is only a partial termination, before the settlement of the terminated portion of this Contract, Contractor may file with the City a request in writing for an equitable adjustment by Change Order of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the notice of termination). Such equitable adjustment as the City and Contractor may agree upon shall be made in accordance with the prices provided in Contractor's Proposal and bid documents. Nothing contained herein shall limit the right of the City and Contractor to agree upon the amount or amounts to be paid to the continued portion of the Contract when the Contract does not contain an established Contract price for the continued portion. If the City denies said Change Order Request, Contractor may pursue its remedies only in accordance with the claims requirements of the Contract.

ARTICLE 15 -- LEGAL REQUIREMENTS

15.01 COMPLIANCE WITH LAWS AND REGULATIONS; INDEMNIFICATION

A. Contractor shall keep itself fully informed of and comply with the Charter, ordinances and regulations of the City and other local agencies having jurisdiction over the Work, and all federal and state laws, regulations, orders or decrees in any manner affecting or applicable to the Contract Documents, the performance of the Work, or those persons engaged therein.

B. All services, Work and Materials provided under the Contract shall be in full accordance with the latest laws and requirements, or the same as may be amended, updated or supplemented from time to time, of applicable Codes, including, but not limited to, the following: the Code(s) referenced in the Contract Documents; Americans with Disabilities Act Accessibility Guidelines; CAL-OSHA regulations; the requirements of the State Division of Industrial Safety of the Department of Industrial Relations; the Division of the State Architect – Access Compliance; the regulations of the California Public Utilities Commission, the State Fire Marshal, the National Fire Protection Association, the San Francisco Department of Public Health, and of other bodies or officials having jurisdiction or authority over same; and other state and federal laws and regulations. Contractor and any and all persons, firms and corporations employed by or under Contractor shall observe and comply with all said Codes, laws, regulations and requirements.

C. As required by and in accordance with Section 3.24, Contractor shall assume the defense of, indemnify and hold harmless the City, its boards and commissions, other Indemnitee(s), or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims or liability arising from the violation of Codes, laws, regulation, orders or decrees affecting Contractor or its Subcontractors or Suppliers of all tiers in connection with, arising or resulting from performance of the Work.

D. If the City incurs any fines or penalties because of Contractor's (or a Subcontractor's or Supplier's) failure to comply with Codes, laws, regulations, administrative or court orders or decrees, the City may deduct the amount of the fine or penalty from the Contract Sum.

E. Authorized persons may at any time enter upon any part of the Work to ascertain whether Contractor and/or the Work complies with applicable laws, regulations, orders or decrees. Contractor shall promptly notify the City Representative if a regulatory agency requests access to the Site or to records. Contractor shall provide the City Representative with a list of documents provided to the regulatory agency and enforcement actions issued against Contractor.

F. Contractor's compliance with this Section 15.01 is compensated within the Contract Sum. Time required for such compliance is Incidental Work included as part of the Contract Time.

15.02 NONDISCRIMINATION IN CONTRACTS AND BENEFITS

A. **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or Subcontractor, applicant for employment with such contractor or Subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

B. **Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code, and shall require all Subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this Section shall constitute a material breach of this Agreement.

C. **Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in San Francisco Administrative Code section 12B.2(b).

D. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Document by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to San Francisco Administrative Code sections 12B.2(h) and 12C.3(g), a penalty of \$50 for each person for each calendar Day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

15.03 MINIMUM COMPENSATION ORDINANCE FOR EMPLOYEES (MCO)

A. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12.P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

B. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any Subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any Subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

C. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 Days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

D. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that Contractor paid no more than the minimum wage required under State law.

E. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

F. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in section 12P.6.2 of Chapter 12P.

G. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 Days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 Days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

H. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

I. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and this department to exceed \$25,000 in the fiscal year.

15.04 REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code

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Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section 15.04 and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

A. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

B. Notwithstanding the above, if Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

C. Contractor's failure to comply with the HCAO shall constitute a material breach of this Agreement. City shall notify Contractor if such a breach has occurred. If, within 30 Days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 Days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in sections 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

D. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section 15.04. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section 15.04 against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

E. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

F. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

G. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

H. Contractor shall keep itself informed of the current requirements of the HCAO.

I. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

J. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business Days to respond.

K. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

L. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

M. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

15.05 MACBRIDE PRINCIPLES - NORTHERN IRELAND

Under San Francisco Administrative Code section 12F.5, the City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

15.06 PROHIBITION ON POLITICAL ACTIVITY WITH CITY FUNDS

Under San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this Section 15.06, the City may, in addition to any other rights and remedies available hereunder, (1) terminate this Agreement, and (2) prohibit Contractor from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Contractor's use of profit as a violation of this Section 15.06.

15.07 PROTECTION OF PRIVATE INFORMATION

Contractor has read and agreed to the terms set forth in San Francisco Administrative Code section 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of section 12M.2 shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement, bring a false claim action against Contractor under Chapter 6 or Chapter 21 of the Administrative Code, or debar Contractor.

15.08 ASSIGNMENT UNDER PUBLIC CONTRACT CODE SECTION 7103.5

Under Public Contract Code section 7103.5, Contractor and its Subcontractors shall conform to the following requirements:

A. In entering into the Agreement or subcontract to supply goods, services, or Materials under this Agreement, Contractor or its Subcontractors offer and agree to assign the City all rights, title, and interest in and to all causes of action they may have under section 4 of the Clayton Act (15 U.S.C. section 15) or under the Cartwright Act (chapter 2, commencing with section 16700, of part 2 of division 7 of the Business and Professions Code), arising from purchases of goods, services or Materials pursuant to the Agreement or subcontract.

B. The assignment shall be made and become effective at the time the City tenders Final Payment to Contractor, without further acknowledgement by the Parties.

C. Contractor shall include the provisions of this Section 15.08 in its subcontracts and purchase agreements to supply goods, services, or Materials pursuant to the Agreement.

15.09 TROPICAL HARDWOOD AND VIRGIN REDWOOD PRODUCTS BAN

Except as expressly permitted by the application of sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City or use as Materials in performance of this Contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. The City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood wood product.

15.10 PRESERVATIVE-TREATED WOOD CONTAINING ARSENIC

Contractor shall not use as Materials for the Work or otherwise purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

15.11 COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA)

Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities performed or provided under this Agreement and further agree that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

15.12 CONFLICT OF INTEREST

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of section 15.103 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provision and agrees that if it becomes aware of any such fact during the Term of this Agreement it shall immediately notify the City.

15.13 DEBARMENT

Any contractor, Subcontractor, supplier, consultant or subconsultants who fails to comply with the terms of its contract with the City; or who violates any provision of Administrative Code Chapter 6; or who fails to abide by any rules and/or regulations adopted pursuant to Administrative Code Chapter 6; or who submits false claims; or who has violated against any government entity a civil or criminal law relevant to its ability to perform under or comply with the terms and conditions of its contract with the City, may be declared an irresponsible Bidder or an unqualified consultant and debarred according to the procedures set forth in said Chapter 6. See also Section 13.06.

15.14 DRUG-FREE WORKPLACE POLICY; USE OF ALCOHOL

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Moreover, Contractor's employees shall not be under the influence of alcohol while performing Work under this Agreement. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns, shall be deemed a material breach of the Contract.

15.15 SAN FRANCISCO SUNSHINE ORDINANCE

Pursuant to San Francisco Administrative Code section 67.24(e), Bidders are advised that:

- A. Contracts, any bidder's Proposal, responses to Requests for Proposals, and all other records of communications between SFMTA and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded.
- B. As to the person or organization awarded the Contract or benefit, information regarding net worth or other proprietary financial data submitted for qualification for a contract or other benefit will be made available to the public upon request.

15.16 CONSIDERATION OF CRIMINAL HISTORY IN HIRING AND EMPLOYMENT DECISIONS

A. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

B. The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, and shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement.

C. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

D. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

E. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in

subsection XX(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

F. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

G. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

H. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

15.17 LOCAL HIRE REQUIREMENTS

If applicable, Contractor shall comply with local hiring requirements mandated by the San Francisco Local Hiring Policy for Construction, as set out in Administrative Code section 6.22.G and implementing regulations, as those requirements are further stated in the Local Hiring Requirements on pages LH-1 through LH-8.

ARTICLE 16 -- PARTNERING

16.01 PARTNERING LEVEL

A. This Project shall incorporate the required partnering elements for Partnering Level as stated in the Invitation for Bid (IFB).

16.02 SUMMARY

A. This Article 16 specifies the procedures for establishing a collaborative partnering process. The partnering process will assist the City and Contractor to develop a collaborative environment so that communication, coordination, and cooperation are the norm, and to encourage resolution of conflicts at the lowest responsible management level.

B. The partnering process is not intended to have any legal significance or to be construed as denoting a legal relationship of agency, partnership, or joint venture between the City and Contractor.

C. This specification does not supersede or modify any other provisions of the Contract, nor does it reduce or change the respective rights and duties of the City and Contractor under the Contract, or supersede contractual procedures for the resolution of disputes, including the submittal of a timely Notice of Potential Claim or Contract Claim.

D. The "San Francisco Partnering Field Guide" is available to the Project Team as a recommended reference document. This guide provides structure, context and clarity to the partnering process. The guide is available at the City's partnering program website www.sfpartnering.com.

16.03 DEFINITIONS

The following definitions apply to this Article 16.

A. **Partnering Charter ("Charter"):** The Charter is the guiding focus for the Project Team. It documents the team's vision and commitment to work openly and cooperatively toward mutual success during the life of the Project. The Charter helps to maintain accountability and clarity of agreements made and allows for broader communication of the team's distinct goals and partnering process. The Charter includes the following elements:

1. Mutual goals
2. Partnering Maintenance Plan
3. Dispute Resolution Plan with Issue Resolution Ladder
4. Team commitment statement and signatures

B. **City Partnering Fundamentals Training:** Training provided by the City to Contractor and City staff on the fundamentals of partnering. Information may be found at www.sfpartnering.com.

C. **Collaborative Partnering:** A structured and scalable process made up of elements that develop and grow a culture (value system) of trust among the parties of a construction contract. Together, the combination of elements, including the Charter, executive sponsorship, partnering meetings, accountability tools for the Project Team (Scorecards), and facilitator, if employed, create a collaborative atmosphere on each project.

D. **Core Team Partnering:** The Project Team members who are a part of the Project for its duration, including the following (not in order of hierarchy):

City:	Contractor:
Resident Engineer	Superintendent
Project Manager	Project Executive
Construction Manager	Jobsite Supervisor
Engineer, Architect	Project Manager
Division Manager	Project Engineer
Construction Engineer	Subcontractors
Inspectors	Key suppliers
Client Department representative	Senior Management (e.g. Area Manager, Operations Manager, VP, President, Owner)
Critical third parties: stakeholders, other agencies, utilities, etc., or anyone who could potentially stop or delay the Project.	

E. **Executive Partnering Team:** The senior leaders of the City and Contractor who may form a project board of directors and are charged with steering the project to success.

F. **Executive Sponsorship:** Commitment to, and support of, the partnering process from the senior most levels of the City and Contractor organizations.

G. **External Facilitator:** The mutually agreed upon experienced professional neutral partnering facilitator whose profession is providing partnering services for construction projects.

H. **Internal Facilitator:** A trained employee or representative of the City who provides partnering facilitation services for Level 1, 2 or 3 projects.

I. **Issue Resolution Ladder (IRL):** A stepped process that formalizes the negotiation between the parties of a construction project. While actual titles may differ, the

intent of this ladder is to provide a process that elevates issues up the chain of command between the parties involved in an issue. The objective is to resolve issues at the lowest practical level and to not allow individual project issues to disrupt project momentum. When an issue is escalated one level, it is expected that a special meeting focusing on the negotiated settlement for that issue will be called with the goal of settling as quickly as possible. A sample issue resolution ladder (IRL) is shown below. The IRL will be developed during the kick-off partnering workshop or pre-construction meeting.

Sample Issue Resolution Ladder			
Team Level	Awarding City Department	Contractor	Time to Elevate
I	Inspector or Resident Engineer	Foreman/ Superintendent	1 day
II	Project Manager	Project Manager	1 week
III	Program Manager	Area Manager	1 week
IV	Division Manager	Operations Manager	2 weeks
V	Deputy Department Director	Owner; President	1 week
VI	*Optional Facilitated Issue Resolution		

J. **Kick-off Partnering Workshop:** The initial partnering session where the team develops its partnering charter and officially starts the partnering process.

K. **Multi-Tiered Partnering (Executive - Core Team - Stakeholder):** Partnering workshops can be divided into multiple sessions, including an executive session, core team session and stakeholder session. For very large projects, a best practice is to use the executive team as a project board of directors who provide vision and steer the project. The core team is the central group of key individuals who are on the project throughout the duration. The stakeholder team is made up of end users, operations and maintenance personnel or third parties who can influence the outcome of the project.

L. **Partnering Level:** The desired level of engagement in the partnering process may vary depending on a contract's size, complexity, location or other risk factor. If a project encounters any of the following risk factors in the Matrix, the City may consider adjusting the partnering process to the appropriate level.

The Citywide Partnering Matrix

Level	Estimated Construction Amount	Complexity	Political Significance	Relationships	Partnering Process
5	\$100 million +	Highly technical and complex design & construction	High visibility/oversight; significant strategic project	New project relationships; high potential for conflict (strained relationship, previous litigation, or high probability of claims)	Recommended Elements: 12 Sessions/yr. and 12 Surveys/yr. External Facilitator

Level	Estimated Construction Amount	Complexity	Political Significance	Relationships	Partnering Process
4	\$30 - \$100 million	High complexity with schedule constraints, uncommon materials, etc.	Probable stakeholder and community interest or involvement	New contractors or CM, new subs	Recommended Elements: 6 Sessions/yr. and 12 Surveys/yr. External Facilitator
3	\$10 - \$30 million	Increased complexity	Likely, depending on the location and other project characteristics	Established relationships; new CM, subs, or other key stakeholders	Elements: 4 Sessions/yr. and 4 Surveys/yr. Internal or External Facilitator
2	\$2 - \$10 million	Standard complexity	Unlikely, unless in a place of importance	Established relationships; new subs, new stakeholders	Elements: Minimum 2 Sessions Internal or External Facilitator
1	\$600,000 - \$2,000,000	Low level complexity	Unlikely, unless in a place of importance	Established relationships; new subs, new stakeholders	Elements: Create IRL Recommended: Minimum 2 Sessions (Level 2)

M. Partnering Maintenance Plan: An element of the Charter, the Partnering Maintenance Plan describes the frequency of follow-up partnering sessions (including the close-out/lessons learned session) and the use and frequency of project scorecards.

N. Partnering Sessions: Formalized meetings (workshops) focused on developing a collaborative culture among the Project Team. Teams use these meetings to, among other tasks, set project goals, define project commitments and attend joint training sessions.

O. Project Scorecards: An accountability tool that allows Project Teams to measure how well they are following through on commitments made to one another. Typically, the Project Scorecard is a confidential survey prepared and submitted to the team by the facilitator, if any. The facilitator then compiles the responses into a report which is then sent out to the Project Team for review.

P. Project Stakeholders: Any person or entity that has a stake in the outcome of the Project. Examples include the end users, neighbors, vendors, special interest groups, those who must maintain the facility, those providing funding, and those who own one or more of the systems.

Q. Project Team: Key members from the City and Contractor organizations responsible for the management, implementation, and execution of the Project, who will participate in the partnering process.

R. Self-Directed Partnering: The Project Team leads itself through all of the collaborative partnering elements.

S. Stakeholder Team (in Multi-tiered Partnering): Those individuals who have a stake in the outcome of the Project.

T. Subcontractor on-boarding/off-boarding: At the various stages of construction, key subcontractors (trades) determined by City and Contractor will participate in the partnering process as needed as their work begins and is completed.

U. Third-Party Facilitator Agreement: An agreement, appended to this specification, to which the external facilitator and the City and the Contractor are parties, and which establishes a budget for fees and expenses of the facilitator, workshop site costs, if any,

and the terms of the facilitator's role for the Project consistent with the requirements of this Article 16.

16.04 PURPOSE/GOALS

- A. The goals of project partnering are to:
 - 1. Use early and regular communication with involved parties;
 - 2. Establish and maintain a relationship of shared trust, equity and commitment;
 - 3. Identify, quantify, and support attainment of mutual goals;
 - 4. Develop strategies for using risk management concepts and identify potential project efficiencies;
 - 5. Implement timely communication and decision-making;
 - 6. Resolve potential problems at the lowest possible level to avoid negative impacts;
 - 7. Hold periodic partnering meetings and workshops throughout the life of the project to maintain the benefits of a partnered relationship;
 - 8. Establish periodic joint evaluations of the partnering process and attainment of mutual goals.

16.05 COSTS

A. The fees and expenses of the External Facilitator, project scorecards, partnering training and workshop site costs, if any, shall be paid for by the City as set forth in the Third-Party Facilitator Agreement.

B. The Project will include an allowance to cover the full partnering costs. The allowance will be determined by the City based on the Project's partnering level. The Contractor shall pay the invoices of the facilitator and/or workshop site costs after approval by both parties. Upon receipt of satisfactory evidence of payment of facilitator invoices by the Contractor, the City will then reimburse the Contractor for such invoices from a fixed cash allowance included as a bid item in the bid prices. No mark-up, overhead or other fees shall be added to the partnering costs. If the total cost of the partnering differs from the allowance amount, the contract sum shall be adjusted by change order for the difference between the actual cost and the amount included in the bid, as an additional amount due the Contractor or a credit to the City, as appropriate.

16.06 PARTNERING TRAINING

In accordance with the Citywide partnering program, at least one member of the City staff team and the Contractor shall attend the City Partnering Fundamentals Training and have received a Certificate of Completion from the training session. It is recommended that the key members of the project delivery team (i.e. the Contractor's project executive, project manager and superintendent, and the City project manager and construction manager) be trained. It is recommended that the prime contractor have at least two members of the team trained so that one is available on the project at all times. Training is free to participants and is offered regularly by the City. Attendance can be coordinated through the Partnering Coordinator and www.sfpartnering.com. Evidence of training (i.e. the Certificate of Completion) must be provided to the City project manager no later than 90 days after Notice of Award.

16.07 PARTNERING INITIATION

The City Representative, after award of Contract but in no case longer than 30 days following Notice to Proceed (NTP), shall send the Contractor a written invitation to enter into a

partnering relationship. If an External Facilitator will be retained, the City and Contractor shall cooperatively and in good faith select the facilitator as specified in subparagraph Section 16.09, below.

16.08 PARTNERING ELEMENTS

The partnering levels are based on the Citywide Partnering Matrix set forth in Section 16.03.L.

- A. For Level 1 Projects:
 1. The team may self-direct partnering or retain an internal or an External Facilitator.
 2. **Self-Directed Partnering:** Teams electing to self-direct the partnering process shall develop the Issue Resolution Ladder during the pre-construction meeting. During the pre-construction meeting, the team is encouraged to mutually develop the core project goals, including: schedule, budget, quality, and safety. The team is encouraged to create a team commitment statement with signatures.
 3. **Internal or External Facilitator.** If the City and Contractor elect to retain an internal or External Facilitator, they will do so according to the process listed in Section 16.09 of this document. They will follow the partnering elements listed for Level 2 Projects.
- B. For Level 2 Projects, the required partnering elements are:
 1. **Internal or External Facilitator.** The City and Contractor shall retain either an internal or External Facilitator according to the process listed in Section 16.09, below for the partnering sessions or workshops. The facilitator shall be mutually agreed to by the City and Contractor.
 2. **Kick-off Partnering Workshop.** The City, Contractor, and facilitator, if any, shall meet to mutually develop a strategy for a successful partnering process and create their initial partnering charter.
 3. **Partnering Charter and/or mission statement.** The City and Contractor shall agree to create a partnering charter that includes:
 - a. Mutual goals, including core project goals that relate to project schedule, budget, quality, and safety, and possibly project-specific goals and mutually-supported individual goals.
 - b. Partnering maintenance and close-out plan, including partnering session attendees and frequency of meetings.
 - c. Dispute resolution plan that includes an Issue Resolution Ladder.
 - d. Team commitment statement and signatures.
 4. **Minimum Two Partnering Workshops or Sessions** (including kick-off workshop). The partnering team may participate in additional workshops or sessions during the life of the project that they mutually agree is necessary and appropriate.
 5. **Executive Sponsorship.** Commitment to, and support of, the partnering process from the most senior levels of the City and Contractor organizations.
 6. **Issue Resolution Ladder.** The City and Contractor shall mutually develop an IRL.

- C. For Level 3 Projects, add the following elements:
 - 1. **Internal or External Facilitator.** City and Contractor shall retain either an Internal Facilitator or an External Facilitator according to the process listed in Section 16.09, below for the partnering meetings or workshops. The facilitator shall be mutually agreed to by the City and Contractor.
 - 2. **Quarterly Partnering Workshops or Sessions** (including kick-off workshop). The partnering team may participate in additional workshops or sessions during the life of the project as needed.
 - 3. **Quarterly Project Scorecards.** City and Contractor shall participate in periodic partnering evaluation surveys to measure progress on mutual goals and short-term key issues as they arise.
 - 4. **Key Subcontractor On-Boarding/Off-Boarding.** Key subcontractors will be invited to participate in the partnering sessions as necessary as determined by City and Contractor as their participation in the project work becomes relevant.
- D. For Level 4 Projects, recommend adding the following elements:
 - 1. **External Facilitator for Kick-off and Bi-Monthly Partnering Sessions.** City and Contractor will retain an External Facilitator according to the process listed in Section 16.09, below for the kick-off partnering workshop and bi-monthly partnering meetings. Additional meetings, workshops, or sessions may be facilitated by mutual agreement.
 - 2. **Bi-Monthly Partnering Sessions.** The partnering team shall convene partnering sessions at least every two months throughout the duration of contract.
 - 3. **Monthly Project Scorecards.** City and Contractor shall participate in partnering evaluation surveys at least every month.
- E. For Level 5 Projects, recommend adding the following elements:
 - 1. **Monthly Partnering Sessions.** The Project Team may hold professionally facilitated partnering sessions monthly throughout the duration of the project.
 - 2. **Multi-tiered Partnering (Executive – Core Team – Stakeholder).** Partnering team will divide into smaller groups and convene multiple sessions including an executive Session, core team session and stakeholder session.
 - 3. **Monthly Project Scorecards.** City and Contractor shall participate in monthly partnering evaluation surveys.

16.09 SELECTION OF A PROFESSIONAL NEUTRAL FACILITATOR

- A. If an External Facilitator will be retained, the City and Contractor shall meet as soon as practicable after award of contract, but in no case later than 30 days after NTP, to mutually select a facilitator. The City and Contractor shall also schedule the kick-off workshop, determine the workshop site and duration, and agree to other administrative details.
- B. The City, Contractor, and selected facilitator shall execute a Third-Party Facilitator Agreement within 30 days of NTP.
- C. The facilitator shall lead the kick-off partnering workshop and other partnering sessions as necessary or required.

16.10 FACILITATOR QUALIFICATIONS AND REQUIREMENTS; EVALUATIONS

- A. The facilitator shall be trained in the recognized principles of partnering.
- B. The facilitator shall have the following professional experience and qualifications:
 1. At least three years' experience in partnering facilitation with a demonstrated track record, including public sector construction for a city or other municipal agency; and,
 2. Skill set that may include construction management, negotiations, labor-management mediation, and/or human relations.
- C. The facilitator shall be evaluated by the partnering team: (1) at the end of the Kick-off Partnering Workshop; and (2) at the project close-out partnering session.

ARTICLE 17 -- DISPUTE RESOLUTION

17.01 NOTICE OF DISPUTE.

For any dispute involving a question of fact that does not involve a claim for additional compensation or extension of Contract Time under Article 6 or Article 7, respectively, the aggrieved party shall furnish the other party with a notice of dispute within 15 Days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply with 14 Days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the party's position.

17.02 DETERMINATION OF THE ENGINEER.

Disputes arising in the performance of this Contract that are not resolved by negotiation between the parties shall be decided in writing by the Engineer. The decision shall be administratively final and conclusive unless within ten Days from the date of such decision, unless Contractor mails or otherwise furnishes a written appeal to the SFMTA's Deputy for Contract Administration. In connection with such an appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. Upon hearing of the appeal, the SFMTA's Deputy for Contract Administration will issue a written decision. This decision shall be administratively final and conclusive unless within ten Days from the date of such decision, Contractor mails or otherwise furnishes a written appeal to the Director of Capital Programs and Construction. In connection with this appeal, Contractor shall be afforded another opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Capital Programs and Construction shall be administratively final and conclusive. This Section applies to all disputes unless a specific provision of this Contract provides that the Engineer's decision as to a particular dispute is final.

17.03 CONTRACTOR SHALL NOT SUSPEND WORK.

Pending final resolution of a dispute hereunder, Contractor shall proceed diligently with the performance of its obligations under the Contract in accordance with the written directions of the Engineer.

17.04 ALTERNATIVE DISPUTE RESOLUTION.

If agreed to by both parties, disputes may be resolved by an alternative dispute resolution process. Any agreement to engage in binding arbitration shall require the approval of the SFMTA Board of Directors.

END OF GENERAL PROVISIONS

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